

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
BRIEF &  
APPENDIX**





ORIGINAL

75-2029

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

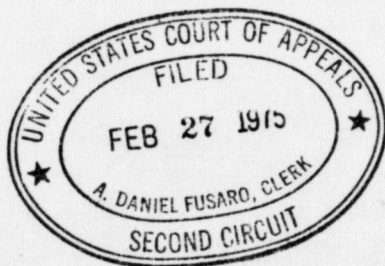
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IN RE ELLEN GRUSSE and

MARIE THERESE TURGEON

No. 75-2029

-----  
APPENDIX TO BRIEF  
ON BEHALF OF  
WITNESS-APPELLANTS



MICHAEL AVERY  
265 Church Street  
New Haven, Connecticut 06510

DAVID N. ROSEN  
265 Church Street  
New Haven, Connecticut 06510

KRISTIN BOOTH GLEN  
30 East 42nd Street  
New York, New York

ATTORNEYS FOR WITNESS-APPELLANTS

PAGINATION AS IN ORIGINAL COPY



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DOCKET SHEET  
CIVIL NO. N-75-42



UNITED STATES DISTRICT COURT

Jury demand date:

U. S. FORM NO. 106 REV. 1-25-60

TITLE OF CASE		ATTORNEYS			
IN RE GRAND JURY SUBPOENAS TO ELLEN GRUSSE and THERESA TURGEON		For plaintiff: Michael Avery 265 Church Street New Haven, Conn. 06510			
		For defendant: William Dow Asst. U.S. Attorney Federal Building New Haven, Conn.			
STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed	Clerk				
J.S. 6 mailed	Marshal				
Basis of Action: Re: Motion to Quash Grand Jury Subpoenas	Docket fee Witness fees				
Action arose at:	Depositions				

DATE  
1975

PROCEEDINGS

Date of  
Judgment

1/23

Motion to Quash Subpoenas to appear and testify before a Grand Jury filed.

"

Motion for Continuance, filed.

"

Motion re: Instructions to Grand Jury, filed.

"

Hearing on above 3 motions. All three motions denied for reasons stated in open Court. Motions so endorsed. Matter concluded at 10:55 A.M. Newman, J. M-1/28/75 Copies of Motions and endorsements thereon mailed to both counsel.



PLAINTIFFS

DEFENDANTS

In the Matter of Grand Jury Pro-  
ceedings re:

A<sub>3</sub>

ELLEN GRUSSE and  
MARIE THERESA TURGEON

CAUSE Civil Contempt arising out of  
refusal to testify before Grand Jury.

ATTORNEYS

William Dow  
Assistant U. S. Attorney  
Federal Building  
New Haven, Conn.

David Rosen  
265 Church Street  
New Haven, Conn. 06510

Michael Avery  
265 Church Street  
New Haven, Conn. 06510

Mary Ellen Wynn  
265 Church Street  
New Haven, Conn.

<input type="checkbox"/> CHECK HERE IF CASE WAS FILED IN FORMA RECEIVED	FILING FEES PAID			STATISTICAL CARDS	
	DATE	RECEIPT NUMBER	C.D. NUMBER	CARD	DATE MAILED
	2/21/75	37139 Appeal \$5.00 (Turgeon)	A-4	JS-5	
				JS-6	



DATE 1975	NR.	PROCEEDINGS
2/13	1	Motion to compel testimony of Marie Theresa Turgeon, filed by government.
"	2	Motion to compel testimony of Ellen Grusse, filed by government.
"	3	Memorandum in connection with above motions filed by government.
"	4	Motion to Quash Subpoenas, filed by witnesses Ellen Grusse and Marie Theresa Turgeon.
"	5	Motion for Protective Orders, filed by witnesses Grusse and Turgeon
"	6	Motion to Quash Subpoenas Duces Tecum, filed by witnesses.
"	7	Appearances of David Rosen for witnesses Grusse and Turgeon filed.
"		Hearing held.re Motions to compel, Motion for Protective Orders and Motions to Quash Subpoenas. Oral motion to Immunize made by the Government. Respondents request continuance of this hearing - DENIED. Motions to Quash Subpoenas of witnesses Turgeon and Grusse DENIED. Motion for Protective Orders DENIED. Ruling re Motion to Quash Subpoenas Duces Tecum DEFERRED. Government's Motion for Immunization is granted and Orders entered accordingly. Oral motion of respondents for a Protective Order restraining agents of the F.B.I. from Harassing families of the respondents - Court DENIES same. hearing concluded 1:10 P.M. Newman, J. M-2/13/75
"	8	Order Granting Immunity re Marie Theresa Turgeon, entered. Newman, J. M-2/13/75
"	9	Order Granting Immunity re Ellen Grusse, entered. Newman, J. M-2/13/75
"		Order endorsed on Witnesses Motion to Quash Subpoenas, as follows: "Motion Denied for reasons stated in open Court." Newman, J. M-2/13/75
"		Order endorsed on witnesses' Motion for Protective Orders, as follows: "Motion Denied for reasons stated in open court." Newman, J. M-2/13/75
2/14	10	Motion to Compel Testimony of witnesses Turgeon and Grusse, filed by government.
"		Hearing on Government's Motion to Compel Testimony. Government's witness Roy Brown of Middletown, Conn., sworn and testified. Court GRANTS Government's Motion to Compel Testimony. Government to submit Order of Text of Questions asked by the Grant Jury. Court recesses at 12:55. Newman, J. M-2/18/75
"	11	Order Compelling Testimony re Ellen Grusse, entered. Newman, M-2/18/75
"	12	Order Compelling Testimony re Marie Theresa Turgeon, entered. Newman, J. M-2/18/75
"		Hearing held. Government informs Court that the two witnesses for Grand Jury proceedings refused to answer questions posed to them. Government moves for an order to show cause why the two witnesses should not be held in contempt of court. Court grants same and orders the two witnesses to appear in this Court on Tuesday, Feb. 18, 1975, at 9:30 A.M. to show cause why they should not be held in contempt of Court. Court will still hold in abeyance the Motions to Quash Subpoenas Duces Tecum Court adjourned at 3:30 P.M. Newman, J. M-2/18/75

<p>PLAINTIFF IN THE MATTER OF GRANT JURY PROCEEDINGS Re: ELLEN GRUSSE and MARIE THERESA TURGEON</p>	<p>DEFENDANT</p>	<p>DOCKET NO. N 75-42 PAGE 2 OF _____ PAGES</p>
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DATE	NR.	PROCEEDINGS
1975		<p>ALL DOCUMENTS AND HEARINGS LISTED ON PREVIOUS PAGE 1 WERE FILED AND HEARD IN MISC. N.H.-53, BEFORE PROCEEDINGS WERE FILED UNDER CIVIL ACTION NO. N-75-42 on FEB. 18.</p>
2/18	13	<p>Appearance of Mary Ellen Synn for witnesses Marie Theresa Turgeon and Ellen Grusse, filed.</p>
"	14	<p>Claim of Unlawful Electronic Surveillance and/or Motion to Suppress the Fruits of Unlawful Electronic Surveillance and for Judgment Dismissing Contempt Proceedings, filed by witnesses.</p>
"	15	<p>Affidavits of Michael Avery, David Rosen, Marie Turgeon, Ellen Grusse, Doris Peterson, Rhonda Copeland, Diane Polan, Marie Theresa Turgeon, Judy Turgeon and Madeliene Ruest, Robert Allen Sedler, filed by witnesses.</p>
"	16	<p>Affidavit of William F. Dow, Asst. U. S. Attorney, filed.</p>
"	17	<p>Motion for Search and Disclosure of Electronic or Other Surveillance, filed by witnesses.</p>
"	18	<p>Memorandum of Law in Support of Motion for Search, etc., filed by witnesses.</p>
"	19	<p>Brief in Support of Witnesses' Claims of Law, filed.</p>
"		<p>ABOVE DOCUMENTS FILED AT HEARING HELD THIS DATE.</p>
"		<p>Hearing on Government's Motion to Show Cause Why Witnesses Should Not be Held in Contempt for Failure to Testify Before Grand Jury. Copy of Excerpts of Transcript of Testimony of case held in Middle District of Pennsylvania, filed by witnesses. Supplemental Affidavit of Atty. Michael Tiger in Middle Dist. of Pa. case, filed by witnesses. Affidavit (copy) of Rhonda Copelon Schoenbrod dated 1974 in case out of S.D.N.Y., filed by witnesses. Transcript (copy) of proceedings in case out of S.D.N.Y., filed by witnesses. Asst. U.S. Attorney William Dow, sworn and testified. Witnesses' Exhibit #1 filed - 2 newspaper clippings. Hearing continued to Feb. 19, 1975 (Wed.) at 10:00 A.M. Hearing adjourned at 11:30 A.M. Newman, J. M-2/18/75</p>
2/19		<p>Continued Hearing on Government's Motion to Show Cause Why Contempt Proceedings should not be had against the witnesses. Court Exhibit #1 filed - 2 affidavits - ORDERED SEALED. Both sides rest. at 10:36 A.M. Court rules as follows: A finding that the 2 witnesses, Grusse and Turgeon, are in civil contempt of this Court for failing to answer questions at the Grand Jury Proceedings, and pursuant to 28 U.S.C. 1826, the two witnesses are remanded to the custody of the U.S. Marshal until they purge themselves of the contempt by responding to the questions they have been asked by the Grand Jury, but no longer than the term of this Grand Jury which expires April 2, 1975. Respondents' request for bail denied at this time. Court stays its order of remand until Monday, Feb. 24, 1975 at 12 noon at which time the Court will hear both sides as to conditions of bail that are appropriate. Court will file a written ruling later today. Court sets non-surety bond for each witness in the amount of \$10,000.00 - travel limited to Conn.,</p>



PLAINTIFF		DEFENDANT	DOCKET NO. <u>N-75-42</u>
			PAGE <u>3</u> OF <u>    </u> PAGE
DATE	NR.	PROCEEDINGS	
2/19	20	but for good cause shown and upon request, Court will make an exception; further, 2 witnesses are to contact their respective counsel daily. Court adjourns at 11:00 A.M. Newman, J. M-2/19/75 Non-surety bond in the amount of \$10,000.00 filed by respondent Ellen Grusse. Order entered thereon approving same. Zampano, J. M-2/20/75	
"	21	Non-surety bond in the amount of \$10,000.00 filed by respondent Marie Theresa Turgeon. Order entered thereon approving same. Zampano, J. M-2/20/75	
"		Memorandum of Decision, entered. "***. Since the grounds for declining to answer the Grand Jury's questions are without merit, the witnesses are properly subject to contempt sanctions, and since they have stated to the Court today that they will persist in refusing to testify even though their objections have been overruled, they are adjudicated in civil contempt and remanded to the custody of the U.S. Marshal until such time as they elect to purge their contempt by testifying, but in no event for longer than the expiration of the term of the Grand Jury on April 1, 1975." Newman, J. M-2/19/75 Copies handed to counsel. M-2/20/75 Copy to U.S.M.	
"	22	Motion for Leave to Proceed on Appeal in Forma Pauperis and Affidavit, filed by Witness-appellant Ellen Grusse. Order entered thereon granting same. Newman, J. M-2/20/75 Copies mailed to counsel.	
2/20		Court Reporter's Transcript of Proceedings of February 14, 1975, filed. Gale, R.	
2/20		Judgment entered that the two witnesses are hereby remanded to the custody of the U.S. Marshal until such time as they elect to purge their contempt by testifying, but in no event for longer than the expiration of the term of the Grand Jury on April 1, 1975 said remand is stayed until Monday, February 24, 1975 at noon, the stay being conditioned upon the witnesses posting a \$10,000 non-surety bond, and remaining with the District of Connecticut and maintaining daily telephone contact with their attorneys. Markowski, C. M-2/20/75 Approved. Newman, J. Copies mailed to counsel; copy to U.S.M.	
2/21	23	Notice of Appeal, filed by witnesses Ellen Grusse and Marie Theresa Turgeon. Copies mailed. Copy of Docket Entries and copy of Notice mailed to U.S.C.A.	
2/21		Motion for Provision of Transcript of Proceedings at Government Expense, filed by Witness-Appellant Ellen Grusse. Order entered thereon Granting same. Newman, J. M-2/21/75 Copies mailed.	
2/21		Court Reporter's Transcript of Proceedings of February 18, 1975, filed. Gale, R.	

ORDERS GRANTING IMMUNITY  
UNITED STATES DISTRICT COURT



ONLY COPY AVAILABLE

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

IN RE GRAND JURY INVESTIGATION

ELLEN GRUSSE,

WITNESS

United States District Court  
District of Connecticut  
FILED AT NEW HAVEN 1:05 PM  
February 13, 1975  
By: [Signature]  
Deputy Clerk

ORDER GRANTING IMMUNITY

Now on this 13 day of February, 1975, this matter comes on upon the Application of Peter C. Dorsey, United States Attorney for the District of Connecticut, to grant immunity pursuant to Title 18, United States Code, Section 6002, et seq., to ELLEN GRUSSE and to order ELLEN GRUSSE to testify and produce evidence before a grand jury convened in the District of Connecticut, sitting at New Haven, Connecticut, the witness, ELLEN GRUSSE, being present in person and with her attorney.

After hearing evidence and being advised in the premises the Court finds that a duly constituted grand jury for the District of Connecticut is sitting at New Haven, Connecticut; that the grand jury is inquiring into matters involving violations of Federal statutes; that the said ELLEN GRUSSE appeared before the grand jury and was asked questions by the grand jury pertaining to this matter; that ELLEN GRUSSE refused to answer these questions on the grounds that the answers might tend to incriminate her; that ELLEN GRUSSE is likely to continue to refuse to testify and provide information to the grand jury on the basis of her privilege against self-incrimination; that the testimony of the said ELLEN GRUSSE is, in the judgment of the United States Attorney for the District of Connecticut, necessary to the public interest; that the application for immunity has been approved by Acting Assistant Attorney General John C. Keeney.

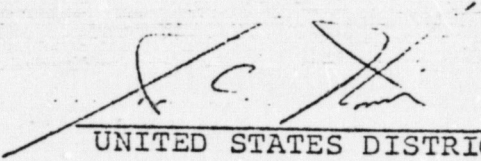
The Court further finds that the Application for grant of immunity in accordance with Title 18, United States Code, Section 6002, et seq., should be allowed; and that the said ELLEN GRUSSE should answer questions asked by the grand jury.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Application heretofore made by Peter C. Dorsey, United States Attorney for the District of Connecticut, to grant immunity to ELLEN GRUSSE in accordance with Title 18, United States Code, Section 6002, et seq., be and the same hereby is allowed. It is further ORDERED that ELLEN GRUSSE answer all questions asked by the grand jury and give testimony and provide information to the grand jury.

IT IS FURTHER ORDERED that no testimony or other information compelled under the order or any information directly or indirectly derived from such testimony or other information, shall be used against ELLEN GRUSSE in any criminal case, except that the said ELLEN GRUSSE shall not be exempted by this order from prosecution for perjury, giving a false statement, or otherwise failing to comply with this order.

IT IS SO ORDERED.

Dated this 12 day of February, 1975.

  
UNITED STATES DISTRICT JUDGE



ONLY COPY AVAILABLE

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

IN RE GRAND JURY INVESTIGATION:

MARIE THERESA TURGEON,

WITNESS

United States District Court  
District of Connecticut  
FILED IN  
1:05 P.M.

February 13, 1975  
Sylvester A. [unclear], Clerk

By: [Signature]  
Deputy Clerk

ORDER GRANTING IMMUNITY

Now on this 13 day of February, 1975, this matter comes on upon the application of Peter C. Dorsey, United States Attorney for the District of Connecticut, to grant immunity pursuant to Title 18, United States Code, Section 6002, et seq., to MARIE THERESA TURGEON and to order MARIE THERESA TURGEON to testify and produce evidence before a grand jury convened in the District of Connecticut, sitting at New Haven, Connecticut, the witness, MARIE THERESA TURGEON, being present in person and with her attorney.

After hearing evidence and being advised in the premises the Court finds that a duly constituted grand jury for the District of Connecticut is sitting at New Haven, Connecticut; that the grand jury is inquiring into matters involving violations of Federal statutes; that the said MARIE THERESA TURGEON appeared before the grand jury and was asked questions by the grand jury pertaining to this matter; that MARIE THERESA TURGEON refused to answer these questions on the grounds that the answers might tend to incriminate her; that MARIE THERESA TURGEON is likely to continue to refuse to testify and provide information to the grand jury on the basis of her privilege against self-incrimination; that the testimony of the said MARIE THERESA TURGEON is, in the judgment of the United States Attorney for the District of Connecticut, necessary to the public interest; that the application for immunity has been approved by Acting Assistant

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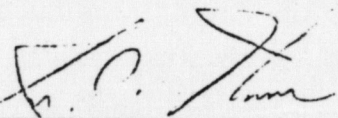
The Court further finds that the Application for grant of immunity in accordance with Title 18, United States Code, Section 6002, et seq., should be allowed; and that the said MARIE THERESA TURGEON should answer questions asked by the grand jury.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Application heretofore made by PETER C. DORSEY, United States Attorney for the District of Connecticut, to grant immunity to MARIE THERESA TURGEON in accordance with Title 18, United States Code, Section 6002, et seq., be and the same hereby is allowed. It is further ORDERED that MARIE THERESA TURGEON answer all questions asked by the grand jury and give testimony and provide information to the grand jury.

IT IS FURTHER ORDERED that no testimony or other information compelled under the order or any information directly or indirectly derived from such testimony or other information, shall be used against MARIE THERESA TURGEON in any criminal case, except that the said MARIE THERESA TURGEON shall not be exempted by this order from prosecution for perjury, giving a false statement, or otherwise failing to comply with this order.

IT IS SO ORDERED.

Dated this 3 day of October, 1975.

  
UNITED STATES DISTRICT JUDGE



AFFIDAVIT OF ASSISTANT  
UNITED STATES ATTORNEY  
DENIAL OF ELECTRONIC SURVEILLANCE

A F F I D A V I T

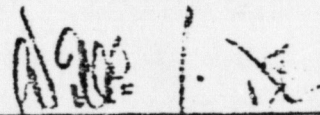
STATE OF CONNECTICUT :  
                              : ss. New Haven - February 18, 1975  
COUNTY OF NEW HAVEN :

WILLIAM F. DOW, III, being duly sworn, does depose  
and say:

1. I am an Assistant United States Attorney assigned  
to the New Haven office of the United States Attorney for the  
District of Connecticut;

2. I have inquired of the appropriate federal authori-  
ties to determine whether there has been any electronic surveil-  
lance or interception of the wire or oral communications of  
Ellen Grusse, Marie Theresa Turgeon, Michael Avery, David Rosen,  
Diane Polan, Rhonda Copelon or Doris Peterson or any electronic  
surveillance or interception of wire or oral communications  
occurring on their premises, whether or not they were present  
or participated in those conversations;

3. Based on the results of such inquiry I hereby  
state that there has been no electronic surveillance or inter-  
ception of wire or oral communications of those individuals named  
in Paragraph Two and that there has been no electronic surveillance  
or interception of oral or wire communications occurring on their  
premises.



WILLIAM F. DOW, III

Subscribed and sworn to before me  
this 18th day of February, 1975.



PETER MEAR  
COMMISSIONER OF THE SUPERIOR COURT



MEMANDORUM OF DECISION  
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

IN RE : CIVIL NO. N-75-42  
: (formerly  
ELLEN GRUSSE and : MISC. NH-53)  
MARIE THERESA TURGEON :

A8

MEMORANDUM OF DECISION

The Government has moved for an order adjudicating two persons, Marie Turgeon and Ellen Grusse, in contempt for failing to answer questions asked at a session of a Federal Grand Jury. 28 U.S.C. § 1826. The witnesses were called before the Grand Jury on January 28, 1975, at which time they declined to answer questions on various grounds including their privilege against self-incrimination. On February 13, 1975, the Government obtained from this Court an order granting the witnesses use immunity pursuant to 18 U.S.C. § 6003. That same day the witnesses returned to the Grand Jury and were asked questions concerning their knowledge of persons who may have participated in Connecticut with two persons who are now fugitives under a Federal indictment in the District of Massachusetts on charges stemming from the robbery of a federally-insured bank, in which a police officer was shot and killed. The witnesses refused to answer the questions, invoking various constitutional amendments as well as the claim that the questioning resulted from illegal electronic surveillance. The following day, February 14, 1975, the Government applied to this Court for an order compelling the



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witnesses to answer the specific questions they had been asked and declined to answer the previous day. Those questions are set out in the margin.<sup>1/</sup> After a hearing, the requested order was issued. The witnesses then returned to the Grand Jury and again persisted in their refusal to answer the same questions previously asked. Still later in the afternoon of February 14, the witnesses were presented again in Court and were orally advised by this Court to show cause on February 18, 1975, why they should not be adjudicated in contempt for their failure to answer the Grand Jury's questions. On February 18, the witnesses were heard through counsel and submitted extensive memoranda outlining the grounds alleged to justify their refusal to answer questions. On January 28 and at all subsequent times, the witnesses were represented by counsel.

1. The witnesses contend initially that they and their attorneys have been subjected to illegal electronic surveillance, that the Grand Jury questioning is or may be derived therefrom, and that such occurrences are a defense to contempt citations for failure to testify. Gelbard v. United States, 408 U.S. 41 (1972). In support of this claim, there have been submitted affidavits by the witnesses and their attorneys (and other attorneys who, though they have not appeared for the witnesses, are alleged to be cooperating attorneys with the attorneys who have appeared). These affidavits allege that the witnesses and attorneys believe they have been subjected to illegal electronic surveillance, i.e.,

wiretapping. The claims are based on conclusory statements that the questions asked must have come from such surveillance, as well as more particularized claims to telephone malfunctioning and unusual sounds heard on telephones. No expert testimony was presented linking the telephone sounds or malfunctioning to a likelihood of wiretapping.

In this Circuit, the allegation of wiretapping, whether or not particularized, is apparently sufficient to trigger the Government's obligation to "affirm or deny" the alleged unlawful act. 18 U.S.C. § 3504. United States v. Toscanino, 500 F.2d 267 (2d Cir. 1974); see United States v. Vielguth, 502 F.2d 1257 (9th Cir. 1974).

The Government has sought to discharge its burden under § 3504 by filing an affidavit of the Assistant United States Attorney responsible for examining these witnesses before the Grand Jury. That affidavit represents that inquiry has been made "of the appropriate federal authorities" to determine whether there has been electronic surveillance of the witnesses or their attorneys, and that "based on the results of such inquiry . . . there has been no electronic surveillance" of the individuals named or on their premises.<sup>2/</sup>

The witnesses were permitted to examine the Assistant United States Attorney at the hearing on February 18. They established that his inquiry had been directed solely to a Special Agent of the Federal Bureau of Investigation with supervisory responsibilities for this matter.

The witnesses dispute the adequacy of the Government's affidavit of denial. Moreover, they have submitted a



list of names and telephone numbers that they assert should be checked by the Government for possible wiretapping. Finally, they assert the right to examine the officials who did the checking on which the Assistant United States Attorney's denial was based.

The form and scope of the Government's denial of wiretapping is similar to what has been deemed sufficient by the Court of Appeals for this and three other circuits.

United States v. Smilow, 472 F.2d 1193 (2d Cir. 1973); Beverly v. United States, 468 F.2d 732 (5th Cir. 1972); In re Grumbles, 453 F.2d 119 (3d Cir. 1971); In re Marx, 451 F.2d 466 (1st Cir. 1971).

It cannot be said with assurance that the submission of the affidavit of denial conclusively puts to rest all possibility of illegal electronic surveillance, as various cases, including Smilow, unhappily illustrate. The risk of undisclosed illegal wiretapping arises primarily from two possibilities. First, the absence of cross-examination of those who conducted the search of Government records leaves open the possibility that the search, even within the agency that undertook it, was not thorough. Secondly, there is the possibility that wiretapping was done by an agency other than the F.B.I. and that the results of such tapping found their way into the files of the F.B.I. The question is whether the denial is adequate to obligate the witnesses to respond to the Grand Jury's questions or face contempt sanctions. On this issue, the decision in this Circuit in United States v.

Persico, 491 F.2d 1156 (2d Cir. 1974), is instructive. The Court there held that where wiretapping had occurred pursuant to court order, a witness could not litigate the validity of the tap before responding to Grand Jury inquiry. The Court emphasized the legitimate concern of the Grand Jury for conducting its business promptly. Persico obviously demonstrates that the Second Circuit is willing to require witnesses to respond to Grand Jury questions even though all possibility of illegal wiretapping has not been ruled out. Nothing has been presented in this hearing to indicate that the risk that a denial of wiretapping in the form presented in the Government's affidavit will later turn out to be incorrect is any greater than the risk that a court-ordered wiretap will later turn out to be invalid on any of the many grounds available for attacking such orders. The willingness to accept some risk of illegal wiretapping in the context of a contempt proceeding involving a Grand Jury witness seems to be grounded on the fact that requiring a witness to respond after obtaining use immunity is a less drastic assertion of governmental power than prosecuting a person for a criminal offense. In the latter situation the risk tolerated by Persico would plainly not be tolerated; a suppression hearing would be held.

Here the Government has made a denial of wiretapping, based upon the report of the agency investigating the matter at hand. The denial covers the witnesses and the names of the attorneys they furnished the Government. It covers the named persons and "their premises." I find this denial sufficient



to satisfy 18 U.S.C. § 3504, in the context of a contempt proceeding against an immunized Grand Jury witness, under the current standards prevailing in this Circuit.

The witnesses' submission of additional names and telephone numbers does not require a further response from the Government. The list submitted gives no identification of the names of those persons not previously identified to the Government as attorneys for the witnesses. Moreover, there is no specification on the list of the reason for checking all of the telephone numbers given for the names that were checked. For example, for the witness Ellen Grusse, 14 telephone numbers are listed.

2. Challenge is made to the composition of the Grand Jury. Cf. United States ex rel. Chestnut v. Criminal Court, 442 F.2d 611 (2d Cir. 1971). The claim is based on alleged unconstitutional discrimination against Blacks and women.

The claim respecting Blacks is based on the same data that was considered by the Second Circuit in United States v. Jenkins, 496 F.2d 57 (2d Cir. 1974), affirming a conviction from this District. While that same data has been given a somewhat more sophisticated analysis in testimony later presented to this Court in United States v. Gonzalez, Criminal No. B-115 (D. Conn. May 22, 1974), the data was before the Court of Appeals in Jenkins, and the affirmance there forecloses further consideration of the issue in this

The claim concerning discrimination against women is not readily understood. The witnesses' brief alleges that the same data presented in Jenkins (though not litigated on this point) shows that of 455 persons selected or rejected for the venire, about 60% were female. The brief then asserts "from that total number, however, only 23% were selected for service, compared to 45% of the men." It is not clear what numbers were used to compute the 23%. In any event, no unconstitutional discrimination has been shown. The witnesses do not cite any court rule or practice that prevents or in any way hinders women from serving on juries. It may well be that women seek bona fide excuse from jury service in greater numbers than men on the basis of a need to care for young children at home. The honoring of such excuses does not deny these witnesses any constitutionally protected rights. Taking judicial notice of the records of this Court, the Court notes that of the 20 members of the Grand Jury presently serving from the 23 originally impaneled, there are eight women and twelve men.

3. The witnesses challenged the grant of use immunity and also resist the contempt citation on the ground that the Government has not demonstrated compliance with the guidelines which Attorney General Kleindienst advised Chairman Celler of the House Judiciary Committee by letter dated November 30, 1971, were being used to govern decisions by Department of Justice personnel in deciding whether to seek use immunity. A demonstration of compliance with these



guidelines has been rejected by the Fifth Circuit, In re Pierney, 465 F.2d 306 (5th Cir. 1972), and by this Court, In re Cardassi, 351 F.Supp. 1080 (D. Conn. 1972).

4. The witnesses next urge that the immunity order was invalid and that they should therefore not be cited for contempt because the use immunity order was not accompanied by their requested form of protective order.<sup>3/</sup>

The order sought would have required the Government to certify the presently existing evidence implicating the witnesses in the matters under inquiry, barred subsequent prosecution of the witnesses on any evidence other than what was thus certified, prohibited Government officials from making investigative use of the witnesses' compelled testimony, and required the witnesses to be furnished a copy of their testimony.

The first portion of the requested order follows a suggestion viewed favorably in Goldberg v. United States, 472 F.2d 513 (2d Cir. 1973). The suggestion, however, was directed to prosecutors, and not to District Courts establishing conditions under which use immunity could be conferred. If the Government has any thought of one day prosecuting these witnesses, the requested certification would certainly aid it in establishing its burden of demonstrating that no use or derivative use was made of the compelled testimony. But the infrequency of prosecution of witnesses given use immunity may well prompt the Government not to accept the Goldberg suggestion as a routine practice. The Government

today elected to file, under seal, the evidence presently available against the witnesses.<sup>4/</sup>

9 The request that the Government be barred from prosecuting the witnesses on any evidence other than what is now certified would transform use immunity into a modified form of transactional immunity contrary to Kastigar v. United States, 406 U.S. 441 (1973). If evidence hereafter comes to the Government's attention implicating the witnesses in criminal activity, Kastigar requires the Government to sustain its burden of proving a source independent of the compelled testimony, but if that burden is sustained, use of the new evidence is not barred.

The request for a transcript of compelled testimony would surely be appropriate if any action is taken against the witnesses, either for perjury or some other offense, but until such action appears likely, the request is premature.

For these reasons the request for a protective order was denied. The Government has represented that it will not seek any indictment of the witnesses from the same Grand Jury to which they testify.

5. Finally, the claim is made that the compulsion of answers from these witnesses constitutes an abuse of the Grand Jury function. The witnesses allege that the Government is interested only in finding the present whereabouts of the two fugitives from the Massachusetts robbery and otherwise building its case against those fugitives.

The Government informed the witnesses, with the concurrence of the Grand Jury foreman, that the Grand Jury



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was investigating possible violations in the District of Connecticut of statutes punishing accessories after the fact, 18 U.S.C. § 3, and those who harbor fugitives, 18 U.S.C. § 1071, in connection with the Massachusetts bank robbery.

The questions put to the witnesses demonstrate on their face that they properly relate to the possible violations in this District that the Government represented were being pursued. That the answers might also lead to the identification of the whereabouts of two fugitives does not bar the Grand Jury from hearing them.

More generally, abuse of the Grand Jury function is alleged because the witnesses were subpoenaed after they declined to answer questions asked by F.B.I. agents, and because of alleged harassment. Since the questions legitimately relate to possible violations of Federal law in this District, they cannot be avoided simply because they were initially asked by F.B.I. agents. The claim of harassment is without merit. It is based on affidavits of the witnesses that do no more than indicate that the F.B.I. has asked members of the witnesses' families the same type of questions being asked the witnesses. No showing has been made that the questioning, previously pursued by the F.B.I., or presently pursued by the Grand Jury, is searching out intimate personal details as to which, in some circumstances, a right of privacy might thwart an otherwise legitimate inquiry into criminal violations, or at least place upon the Government some burden of demonstrating a specific need for the answers.

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Since the grounds for declining to answer the Grand Jury's questions are without merit,<sup>5/</sup> the witnesses are properly subject to contempt sanctions, and since they have stated to the Court today that they will persist in refusing to testify even though their objections have been overruled, they are adjudicated in civil contempt and remanded to the custody of the United States Marshal until such time as they elect to purge their contempt by testifying, but in no event for longer than the expiration of the term of the Grand Jury on April 1, 1975.<sup>6/</sup>

Dated at New Haven, Connecticut, this 19th day of February, 1975.

Jon O. Newman  
Jon O. Newman  
United States District Judge



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FOOTNOTES

1/ The questions asked of Ellen Grusse were:

1. Do you know or are you acquainted with SUSAN EDITH SAXE, who uses the alias of LENA PALEY, or KATHERINE ANN POWER, who uses the alias of MAY KELLY, and if so have you seen them in Connecticut and do you know where they resided or stayed when they were in Connecticut and also when is the last time you spoke with either or both of these individuals?

2. Have you ever met or come into contact with or had conversation with either SUSAN EDITH SAXE, with the alias of LENA PALEY or KATHERINE ANN POWER, with the alias of MAY KELLY, at 118 Babcock Street in Hartford; 7 Putnam Heights in Hartford during the years 1973 through the present date, and if so where, when and with whom did you have those discussions or conversations?

The questions asked of Marie Turgeon were:

1. Whether or not you appeared before this grand jury on the 23th day of January, 1975?

2. Do you know KATHERINE ANN POWER, also known as MAY KELLY and SUSAN EDITH SAXE, also known as LENA PALEY, photographs of whom are shown to you which have been marked as WD #1 for SAXE and WD #2 for POWER?

3. When you last saw either KATHERINE ANN POWER, also known as MAY KELLY or SUSAN EDITH SAXE, also known as LENA PALEY, where that was, when that was, who they were with, when you saw them, and where they were residing at the time?

4. At some point in time you lived at 23 Marshall Street in Hartford and KATHERINE ANN POWER, also known as MAY KELLY visited you there, most likely during the calendar year 1974. Indicate to the grand jury whether or not that is so and if so when she came there, who she was with, how long she stayed and where she was residing at the time?

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5. During the course of their stay in Connecticut, both KATHERINE ANN POWER, also known as MAY KELLY and SUSAN EDITH SAKS, also known as LENA PALEY, made known to certain acquaintances the fact that they were fugitives and charged with certain crimes. Do you know the individuals to whom they gave that information?

6. Have you heard from or communicated with either KATHERINE ANN POWER, also known as MAY KELLY, and/or SUSAN EDITH SAKS, also known as LENA PALEY within the past three months and if so where did that communication take place and do you know the present whereabouts of either or both of them?

2/ The affidavit reads as follows:

WILLIAM F. DOW, III, being duly sworn, does depose and say:

1. I am an Assistant United States Attorney assigned to the New Haven office of the United States Attorney for the District of Connecticut;
2. I have inquired of the appropriate federal authorities to determine whether there has been any electronic surveillance or interception of the wire or oral communications of Ellen Grusse, Marie Theresa Turgeon, Michael Avery, David Rosen, Diane Polan, Rhonda Copelon or Doris Peterson or any electronic surveillance or interception of wire or oral communications occurring on their premises, whether or not they were present or participated in those conversations;
3. Based on the results of such inquiry I hereby state that there has been no electronic surveillance or interception of wire or oral communications of those individuals named in Paragraph Two and that there has been no electronic surveillance or interception of oral or wire communications occurring on their premises.



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3/ The witnesses also challenged the immunity order on the ground that they lacked sufficient time to oppose its issuance. They were informed on their initial appearance before the Grand Jury that use immunity would be applied for in the event they invoked their privilege against self-incrimination. It was sixteen days later that the Government applied for the use immunity order. Moreover, the witnesses have now had time to prepare memoranda totaling 64 pages outlining their grounds in opposition to the contempt citation.

4/ At the resumed hearing on the contempt application this morning, the Government also submitted to the Court for in camera inspection, along with its certification of evidence, an affidavit that has been included in Court Exhibit 1 and placed under seal for inspection only by a reviewing court. This Court is satisfied that the content of the affidavit in Court Exhibit 1 has no relevance whatever to any of the matters presently at issue, and that disclosure to the parties is not required. The affidavit makes no mention of the witnesses nor contains any reference to anything affecting them or their interests.

5/ Though not briefed, the witnesses urged at oral argument that use immunity was unlawful as to them because of the circumstances that they are close friends who presently live together. This was alleged to create a "community of interest" that would be impaired in the event the compelled testimony of one implicated the other. The claim is without

6/ Following the adjudication of contempt, the witnesses applied for bail pending appeal. See 28 U.S.C. § 1826(b). The statute's requirement of disposition of an appeal within thirty days conflicts with the normal scheduling of appeals pursuant to the Federal Rules of Appellate Procedure. In these circumstances, it seems appropriate to permit the Court of Appeals to determine for itself what scheduling it wishes to establish for the hearing of the appeal the witnesses intend to take and to determine whether the witnesses should be released from confinement pending disposition of the appeal. Accordingly, this Court stayed execution of its order remanding the witnesses to the custody of the United States Marshal until Monday, February 24, 1975, at noon, the stay being conditioned upon the witnesses posting a \$10,000 non-surety bond, and remaining within the District of Connecticut and maintaining daily telephone contact with their attorneys. This will permit the witnesses to apply promptly to the Court of Appeals for further relief, at which time that Court can either terminate or extend the stay or make such other disposition as it deems appropriate.



JUDGMENT OF CONTEMPT  
UNITED STATES DISTRICT COURT

## UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

Feb 20 2 01 PM '75

U.S. DISTRICT COURT  
NEW HAVEN, CONN.

IN RE

ELLEN GRUSSE and  
MARIE THERESA TURGEONCIVIL NO. M-75-42  
(formerly MISC. NH-53)J U D G M E N T

This cause having come on for consideration on Government's motion to hold the above-named witnesses in contempt of court for failure to answer questions posed to said witnesses by the Grand Jury (the Court having granted the witnesses immunity pursuant to 18 USC 6003 on February 13, 1975) and the Court having rendered its Memorandum of Decision on February 19, 1975, finding that the grounds for declining to answer the Grand Jury questions are without merit;

It is ORDERED and ADJUDGED that the two witnesses be and are hereby remanded to the custody of the United States Marshal until such time as they elect to purge their contempt by testifying, but in no event for longer than the expiration of the term of the Grand Jury on April 1, 1975; said remand is hereby stayed until Monday, February 24, 1975 at noon, the stay being conditioned upon the witnesses posting a \$10,000 non-surety bond, and remaining with the District of Connecticut and maintaining daily telephone contact with their attorneys.

Dated at New Haven, Connecticut, this 20th day of February, 1975.

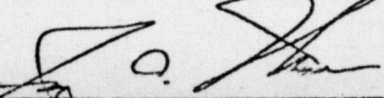
Sylvester A. Markowski

Clerk, United States District Court

By: 

Deputy In Charge

APPROVED:



UNITED STATES DISTRICT JUDGE



NOTICE OF APPEAL

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

IN RE

ELLEN GRUSSE and :  
MARIE THERESA TURGEON : FEBRUARY 20, 1975

NOTICE OF APPEAL

Notice is hereby given that Ellen Grusse and Marie Theresa Turgeon, witnesses above named, hereby appeal to the United States Court of Appeals for the Second Circuit from the judgment of civil contempt entered in this matter on the 19th day of February, 1975.

Dated at New Haven, Connecticut, this 20th day of February, 1975.

---

Michael Avery  
265 Church Street  
New Haven, Connecticut 06510  
Tel. 203-562-9931

---

David N. Rosen  
265 Church Street  
New Haven, Connecticut 06510  
Tel. 203-787-3513

---

Kristin Booth Glen  
30 E. 42nd Street  
New York, New York 10017

---

Lawrence Stern

Attorneys for the witnesses,  
Ellen Grusse and Marie Theresa Turgeon



◇ CERTIFICATION

This is to certify that a copy of this Notice of Appeal has been mailed, first class postage prepaid, this 20th day of February, 1975, to William Dow III, Assistant U.S. Attorney, 141 Church Street, New Haven, Connecticut.

\_\_\_\_\_  
Attorney at Law

AFFIDAVIT  
UNITED STATES V. KEARNEY



IN THE UNITED STATES DISTRICT COURT  
FOR THE  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. ) 73 CR. 1039 (CBM)  
 )  
MELVIN KAZAK KEARNEY and )  
PHYLLIS POLLARD, )  
 )  
Defendants. )  
\_\_\_\_\_ )

AFFIDAVIT

Timothy J. Wilson, being duly sworn, states:

1. That I am an attorney in the General Crimes Section of the Criminal Division of the United States Department of Justice in Washington, D. C.
2. That I caused a written inquiry to be made with appropriate officials responsible for keeping electronic surveillance records for each of the Federal Agencies listed herein inquiring whether there has been at anytime any electronic surveillance of any conversations of Melvin Kazak Kearney and Phyllis Pollard, the defendants herein, of the premises in which they have claimed an interest, and Jesse Berman and Margaret L. Ratner, their attorneys during the period of the attorneys' representation of the said Melvin Kazak Kearney and Phyllis Pollard.

3. The Federal officials to whom these inquiries were directed are:

- (a) Director  
Federal Bureau of Investigation  
Washington, D. C.
- (b) Assistant Director  
Investigations  
United States Secret Service  
Washington, D. C.
- (c) Director  
Intelligence Division  
Internal Revenue Service  
Washington, D. C.
- (d) Assistant Director  
Criminal Enforcement  
Bureau of Alcohol, Tobacco and  
Firearms  
Washington, D. C.
- (e) Assistant Commissioner  
Office of Investigations  
United States Customs Service  
Washington, D. C.
- (f) Administrator  
Drug Enforcement Administration  
Washington, D. C.
- (g) Chief Postal Inspector  
United States Postal Service  
Washington, D. C.

These Agencies were selected as appropriate for inquiry because at the time of this request they were the only Agencies that had requested authority to conduct and had conducted electronic surveillance pursuant to Title III of the Omnibus Crime Control and Safe Streets Act of 1968, Public Law 90-351.

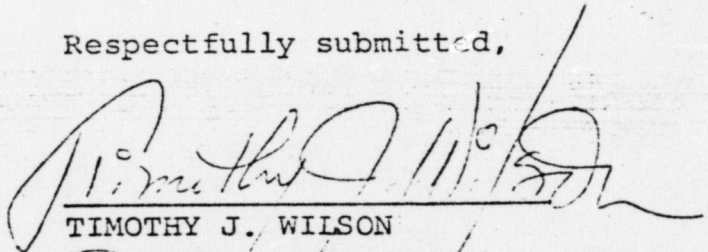
I am advised that all national security electronic surveillance authorized by the Attorney General has A-38



been conducted solely by and all records of such surveillance are maintained by the Federal Bureau of Investigation.

4. That I have received written responses to my inquiry from each of the Agencies listed above and have been officially advised by each of these Agencies that there has been no electronic surveillance of Melvin Kazak Kearney or Phyllis Pollard at any time, that none of the premises in which Melvin Kazak Kearney or Phyllis Pollard claims an interest has been the subject of any electronic surveillance at any time, and that there has been no electronic surveillance of any kind of any conversations of their attorneys, Jesse Berman and Margaret L. Ratner, during the period of the attorneys' representation of these defendants.

Respectfully submitted,



TIMOTHY J. WILSON

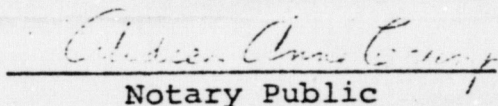
Attorney

Criminal Division

United States Department of Justice

Subscribed and sworn to before me

this 24th day of May, 1974.

  
Notary Public

May Comm expires 8/21/76 A-39

NEW YORK TIMES ARTICLES  
CENTRAL INTELLIGENCE AGENCY  
SURVEILLANCE ACTIVITY



# HUGE C.I.A. OPERATION REPORTED IN U.S. AGAINST ANTIWAR FORCES, OTHER DISSIDENTS IN NIXON YEARS



Richard Helms



James R. Schlesinger



William E. Colby

## FILES ON CITIZENS

### Helms Reportedly Got Surveillance Data in Charter Violation

By SEYMOUR M. HERSH  
Special to The New York Times

WASHINGTON, Dec. 21—The Central Intelligence Agency, directly violating its charter, conducted a massive, illegal domestic intelligence operation during the Nixon Administration against the antiwar movement and other dissident groups in the United States, according to well-placed Government sources.

An extensive investigation by The New York Times has established that intelligence files on at least 10,000 American citizens were maintained by a special unit of the C.I.A. that was reporting directly to Richard Helms, then the Director of Central Intelligence and now the Ambassador to Iran.

In addition, the sources said, a check of the C.I.A.'s domestic files ordered last year by Mr. Helms's successor, James R. Schlesinger, produced evidence of dozens of other illegal activities by members of the C.I.A. inside the United States, beginning in the nineteen-fifties, including break-ins, wiretapping and the surreptitious inspection of mail.

#### A Different Category

Mr. Schlesinger was succeeded at the C.I.A. by William E. Colby in September, 1973.

Those other alleged operations, in the fifties, while also prohibited by law, were not targeted at dissident American citizens, the sources said, but were a different category of domestic activities that were secretly carried out as part of operations aimed at suspected foreign intelligence agents operating in the United States.

Under the 1947 act setting up the C.I.A., the agency was forbidden to have "police, subpoena, law enforcement powers or internal security functions" inside the United States. Those responsibilities fall to the F.B.I., which maintains a special internal security unit to deal with foreign intelligence threats.

#### Helms Unavailable

Mr. Helms, who became head of the C.I.A. in 1966 and left the agency in February, 1973, for his new post in Teheran, could not be reached despite telephone calls there yesterday and today.

Charles Cline, a duty officer at the American Embassy in Teheran, said today that a note informing Mr. Helms of the request by The Times for comment had been delivered to Mr. Helms's quarters this morning. By late evening Mr. Helms had not returned the call.

The information about the

Continued on Page 20, Column 1

# Huge C.I.A. Operation Reported Against Antiwar Forces in the United States

Continued From Page 1, Col. 8

C.I.A. came as the Senate Armed Services Committee issued a report today condemning the Pentagon for spying on the White House National Security Council. But the report said the Pentagon spying incidents in 1970 and 1971 were isolated and presented no threat to civilian control of the military.

The disclosure of alleged illegal C.I.A. activities is the first possible connection to rumors that have been circulating in Washington for some time. A number of mysterious burglaries and incidents have come to light since the break-in at Democratic party headquarters in the Watergate complex on June 17, 1972.

## Duping Charged

Throughout the public hearings and courtroom testimony on Watergate, Mr. Helms and other high-level officials said that the C.I.A. had been "duped" into its Watergate involvement by the White House.

As part of its alleged effort against dissident Americans in the late nineteen-sixties and early nineteen-seventies, The Times's sources said, the C.I.A. authorized agents to follow and photograph participants in antiwar and other demonstrations. The C.I.A. also set up a network of informants who were ordered to penetrate antiwar groups, the sources said.

At least one avowedly antiwar member of Congress was among those placed under surveillance by the C.I.A., the sources said. Other members of Congress were said to be included in the C.I.A.'s dossier on dissident Americans.

The names of the various Congressmen could not be learned, nor could any specific information about domestic C.I.A. break-ins and wiretappings be obtained.

It also could not be determined whether Mr. Helms had had specific authority from the President or any of his top officials to initiate the alleged domestic surveillance, or whether Mr. Helms had informed the President of the fruits, if any, of the alleged operations.

## Distress Reported

These alleged activities are known to have distressed both Mr. Schlesinger, now the Secretary of Defense, and Mr. Colby. Mr. Colby has reportedly told associates that he is considering the possibility of asking the Attorney General to institute legal action against some of those who had been involved in the alleged domestic activities.

One official, who was directly involved in the initial C.I.A. inquiry last year into the alleged domestic spying, said that Mr. Schlesinger and his associates were unable to learn what Mr. Nixon knew, if anything.

Mr. Colby refused to comment on the domestic spying issue. But one clue to the depth of his feelings emerged during an off-the-record talk he gave Monday night at the Council on Foreign Relations in New York.

The C.I.A. chief, who had been informed the previous week of the inquiry by The Times, said at the meeting that he had ordered a complete investigation of the agency's domestic activities and had found some improprieties.

But he is known to have added, "I think family skeletons are best left where they are—in the closet."

He then said that the "good thing about all of this was the red flag" was raised by a group of junior employees inside the agency.

It was because of the prodding from below, some sources have reported, that Mr. Colby decided last year to inform the chairmen of the House and Senate Intelligence Oversight Committees of the domestic activities.

Mr. Schlesinger, who became Secretary of Defense after serving less than six months at the C.I.A., similarly refused to discuss the domestic spying activities.

## Anguish Reported

But he was described by an associate as extremely concerned and disturbed by what he discovered at the C.I.A. upon replacing Mr. Helms.

"He found himself in a cesspool," the associate said. "He was having a grenade blowing up in his face every time he turned around."

Mr. Schlesinger was at the C.I.A. when the first word of the agency's involvement in the September, 1971, burglary of the office of Dr. Daniel Ellsberg's former psychiatrist by the White House security force known as the "plumbers" became known.

It was Mr. Schlesinger who also discovered and turned over to the Justice Department a series of letters written to Mr. Helms by James W. McCord Jr., one of the original Watergate defendants and a former C.I.A. security official. The letters, which told of White House involvement in the Watergate burglary, had been deposited in an agency office.

The associate said one result of Mr. Schlesinger's inquiries into Watergate and the domestic aspects of the C.I.A. operations was his executive edict ordering a halt to all questionable counterintelligence operations inside the United States.

During his short stay at the C.I.A., Mr. Schlesinger also initiated a 10 per cent employee cutback. Because of his actions, the associate said, security officials at the agency decided to increase the number of his



personal bodyguards. It could not be learned whether that action was taken after a threat.

Many past and present C.I.A. men acknowledged that Mr. Schlesinger's reforms were harder to bear because he was an outsider.

Mr. Colby, these men said, while continuing the same basic programs initiated by his predecessor, was viewed by some as "the saving force" at the agency because as a former high-ranking official himself in the C.I.A.'s clandestine services, he had the respect and power to ensure that the alleged illegal domestic programs would cease.

Some sources also reported that there was widespread paper shredding at the agency shortly after Mr. Schlesinger began to crack down on the C.I.A.'s operations.

Asked about that, however, Government officials said that they could "guarantee" that the domestic intelligence files were still intact.

"There's certainly been no order to destroy them," one official said.

When confronted with the Times's information about the C.I.A.'s domestic operations earlier this week, high-ranking American intelligence officials confirmed its basic accuracy, but cautioned against drawing "unwarranted conclusions."

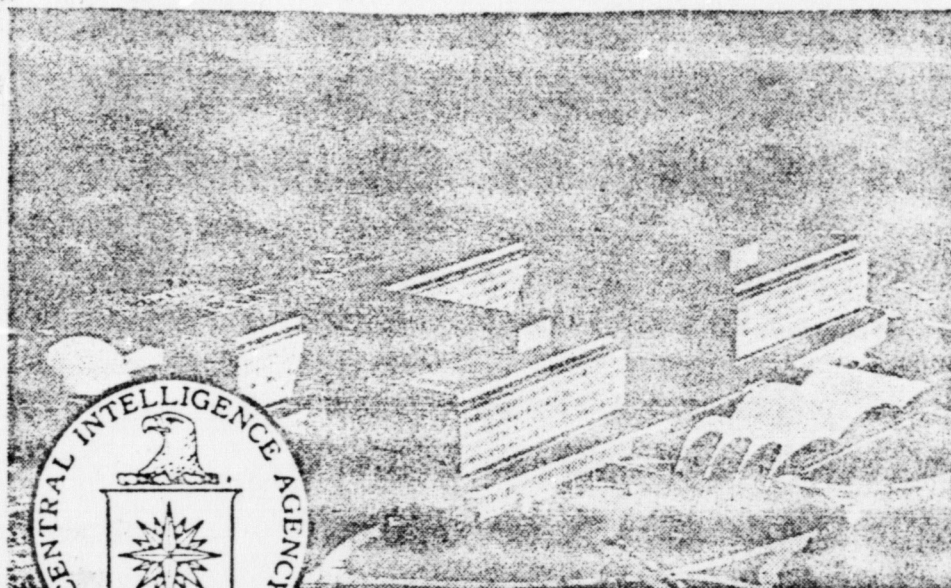
#### Espionage Feared

Those officials, who insisted on not being quoted by name, contended that all of the C.I.A.'s domestic activities against American citizens were initiated in the belief that foreign governments and foreign espionage may have been involved.

"Anything that we did was in the context of foreign counterintelligence and it was focused at foreign intelligence and foreign intelligence problems," one official said.

The official also said that the requirement to maintain files on American citizens emanated, in part, from the so-called Huston plan. That plan, named for its author, Tom Charles Huston, a Presidential aide, was a White House project in 1970 calling for the use of such, illegal activities as burglaries and wiretapping to combat antiwar activities and student turmoil that the White House believed was being "fomented"—as the Huston plan stated—by black extremists.

Former President Richard M. Nixon and his top aides have repeatedly said that the proposal, which had been adamantly opposed by J. Edgar Hoover, then the director of the Federal Bureau of Investigation, was never implemented.



The Central Intelligence Agency building is in Langley, Va. The agency's emblem symbolizes vigilance, directed to all points of the compass.

Government intelligence officials did not dispute that assertion, but explained that, nonetheless, the C.I.A.'s decision to maintain domestic files on American citizens "obviously got a push at that time."

"Yes, you can say that the C.I.A. contribution to the Huston plan was in the foreign counterintelligence field," one official said.

#### 'A Spooky Way'

"The problem is that it was handled in a very spooky way."

"If you're an agent sitting in Paris and you're asked to find out whether Jane Fonda is being manipulated by foreign intelligence services, you've got to ask yourself who is the real target," the official said. "Is it the foreign intelligence services or Jane Fonda?"

However, this official and others insisted that all alleged domestic C.I.A. operations against American citizens had now ceased and that instructions had been issued to insure that they could not occur again.

A number of well-informed official sources, in attempting to minimize the extent of alleged wrongdoing posed by the C.I.A.'s domestic actions, suggested that the laws were fuzzy in connection with the so-called "gray" area of C.I.A.-F.B.I. operations—that is, when an American citizen is approached inside the United States by a suspected foreign intelligence agent.

The legislation setting up the C.I.A. makes the director "responsible for protecting intelligence sources and methods from unauthorized disclosure."

One official with close access to Mr. Colby contended at length in an interview yesterday that the C.I.A.'s domestic actions were not illegal because of the agency's legal right to prevent the possible revelation of secrets.

#### 'Gray Areas'

"Look, you do run into gray areas," the official said, "and, unquestionably, some of this fell into the gray area. But the director does have an obligation to guard his sources and methods. You get some foreigner snooping around and you have to keep track."

"Let's suppose as an academic exercise, hypothetically," the official said, "that a foreigner believed to be an intelligence agent goes to a Washington newspaper office to see a reporter. What do you [the C.I.A.] do? Because it's a Washington newspaper office and a reporter, do you scratch that from the C.I.A.'s record?"

"Sure, the C.I.A. was following the guy, but he wasn't an American."

A number of other intelligence experts, told of that example, described it as a violation of the 1947 statute and a clear example of an activity, even if involving a foreigner, from which the C.I.A. is barred.

Prof. Harry Howe Ransom of Vanderbilt University, considered a leading expert on the

C.I.A. and its legal and Congressional authority, said in a telephone interview that in his opinion the 1947 statute included "a clear prohibition against any internal security functions under any circumstances."

Professor Ransom said that his research of the Congressional debate at the time the C.I.A. was set up makes clear that Congress expressed concern over any police state tactics and intended to avoid the possibility. Professor Ransom quoted one member as having said during floor debate, "We don't want a Gestapo."

Similar reservations about the C.I.A.'s role in domestic affairs were articulated by Mr. Colby during his confirmation hearings before the Senate Armed Services Committee in September, 1973.

Asked by Senator Stuart Symington, Democrat of Missouri, about the "gray" area in the 1947 legislation, Mr. Colby said:

"My interpretation of that particular provision is that it gives me a charge but does not give me authority. It gives me the job of identifying any problem of protecting sources and methods, but in the event I identify one it gives me the responsibility to go to the appropriate authorities with that information and it does not give me any authority to act on my own."

#### 'No Authority'

"So I really see less of a gray area [than Mr. Helms] in that regard. I believe that there is really no authority under that act that can be used."

Beyond his briefings for Senator John C. Stennis, Democrat of Mississippi, and Representative Lucien N. Nedzi, Democrat of Michigan, the respective chairmen of the Senate and House Intelligence subcommittees of the Armed Services Committee, Mr. Colby apparently had not informed other Ford Administration officials as of yesterday of the C.I.A. problems.

"Counterintelligence!" one high-level Justice Department official exclaimed upon being given some details of the C.I.A.'s alleged domestic operations. "They're not supposed to have any counterintelligence in this country."

"Oh, my God," he said, "oh, my God."

A former high-level F.B.I. official who operated in domestic counterintelligence areas since World War I, expressed astonishment and then anger upon being told of the C.I.A.'s alleged domestic activities.

"We had an agreement with them that they weren't to do anything unless they checked with us," he said. "They double-crossed me all along."

He said he had never been told by his C.I.A. counterintelligence colleagues of any of the alleged domestic operations that took place.

Mr. Huston, now an Indianapolis attorney, said in a telephone conversation yesterday that he had not learned of any clandestine domestic C.I.A. activities while he worked in the White House.

#### Huston Disagrees

Mr. Huston took vigorous exception to a suggestion by intelligence officials that his proposed White House domestic intelligence plan resulted in increased pressure on the C.I.A. to collect domestic intelligence.

"There was nothing in that program that directed the C.I.A. to do anything in this country," Mr. Huston said. "There was nothing that they could rely on to justify anything like this. The only thing we ever asked them for related to activities outside the United States."

Two months ago, Rolling Stone magazine published a lengthy list of more than a dozen unsolved break-ins and burglaries and suggested that they might be linked to as yet undisclosed C.I.A. or F.B.I. activities.

Senator Howard H. Baker Jr., Republican of Tennessee, who was vice chairman of the Senate Watergate committee, has publicly spoken of mysterious C.I.A. links to Watergate. The White House transcripts of June 23, 1972, show President Nixon saying to H. R. Halde- man, his chief of staff, "Well, we protected Helms from one hell of a lot of things."

The remark, commented upon by many officials during recent interviews, could indicate Presidential knowledge about the C.I.A.'s alleged domestic activities.

The possible Watergate link is but one of many questions posed by the disclosures about

the C.I.A. that the Times sources say they believe can be unraveled only by extensive Congressional hearings.

The C.I.A. domestic activities during the Nixon Administration were directed, the source said, by James Angleton, who is still in charge of the Counterintelligence Department, the agency's most powerful and mysterious unit.

As head of counterintelligence, Mr. Angleton is in charge of maintaining the C.I.A.'s "sources and methods of intelligence," which means that he and his men must ensure that foreign intelligence agents do not penetrate the C.I.A.

The Times's sources, who included men with access to firsthand knowledge of the C.I.A.'s alleged domestic activities, took sharp exception to the official suggestion that such activities were the result of legitimate counterintelligence needs.

"Look, that's how it started," one man said. "They were looking for evidence of foreign involvement in the antiwar movement. But that's not how it ended up. This just grew and mushroomed internally."

"Maybe they began with a check on Fonda," the source said, speaking hypothetically. "But then they began to check on her friends. They'd see her at an antiwar rally and take photographs. I think this was going on even before the Huston plan."

#### 'Highly Coordinated'

"This wasn't a series of isolated events. It was highly coordinated. People were targeted, information was collected on them, and it was all put on [computer] tape, just like the agency does with information about K.G.B. [Soviet] agents."

"Every one of these acts was blatantly illegal."

Another official with access to details of C.I.A. operations said that the alleged illegal activities uncovered by Mr. Schlesinger last year included break-ins and electronic surveillances that had been undertaken during the fifties and sixties.

"During the fifties, this was routine stuff," the official said. "The agency did things that would amaze both of us, but some of this also went on in the late sixties, when the country and atmosphere had changed."

The official suggested that what he called the "Nixon antiwar hysteria" may have been a major factor in the C.I.A.'s decision to begin maintaining domestic files on American citizens.

One public clue about alleged White House pressure for C.I.A. involvement in the intelligence efforts against antiwar activists came during Mr. Helms's testimony before the Senate Watergate committee in August, 1973.

Mr. Helms told how the President's Foreign Intelligence Advisory Board had once suggested that the agency could "make a contribution" in domestic intelligence operations.

#### 'No Way'

"I pointed out to them very quickly it could not, there was no way," Mr. Helms said. "But this was a matter that kept coming up in the context of feelers. Isn't there somebody else that can take on some of these things if the F.B.I. isn't doing them as well as they should, as there are no other facilities?"

The Times's sources, reflecting the thinking of some of the junior C.I.A. officials who began waving "the red flag" inside the agency, were harshly critical of the leadership of Mr. Helms.

These junior officials are known to believe that the alleged domestic spying on antiwar activists originated as an ostensibly legitimate counterintelligence operation to determine whether the antiwar movement had been penetrated by foreign agents.

In 1969 and 1970, the C.I.A. was asked by the White House to determine whether foreign governments were supplying undercover agents and funds to antiwar radicals and Black Panther groups in the United States. Those studies, conducted by C.I.A. officials who reportedly did not know of the alleged secret domestic intelligence activities, concluded that there was no evidence of foreign support.

"It started as a foreign intelligence operation and it bureaucratically grew," one source said. "That's really the answer."

The source added that Mr.



Angleton's counterintelligence department "simply began using the same techniques for forerunners against new targets here."

Along with assembling the domestic intelligence dossiers, the source said, Mr. Angleton's department began recruiting informants to infiltrate some of the more militant dissident groups.

"They recruited plants, informers and doublers [double agents]," the source said. "They were collecting information and when counterintelligence collects information, you use all of those techniques."

"It was like a little F.B.I. operation."

This source and others knowledgeable about the C.I.A. believe that Mr. Angleton was permitted to continue his alleged domestic operations because of the great power he wields inside the agency as director of counterintelligence.

It is this group that is charged with investigating allegations against C.I.A. personnel made by foreign agents who defect; in other words, it must determine whether a C.I.A. man named by a defector is, in fact, a double agent.

#### Marchetti Book

Victor Marchetti, a former C.I.A. official, said in a book published this year that the "counterintelligence staff operates on the assumption that the agency—as well as other elements of the United States Government—is penetrated by the K.G.B."

"The chief of the C.I.A. staff [Mr. Marchetti did not identify Mr. Angleton] is said to keep a list of the 50 or so key positions in the C.I.A. which are most likely to have been infiltrated by the opposition, and he reportedly keeps the personnel in those positions under constant surveillance," he wrote.

Dozens of other former C.I.A. men talked in recent interviews with similar expressions of fear and awe about Mr. Angleton, an accomplished botanist and

Yale graduate who once edited a poetry magazine there.

He was repeatedly described by former C.I.A. officials as an unrelenting cold warrior who was convinced that the Soviet Union was playing a major role in the antiwar activities.

One former high-level C.I.A. official accused Mr. Angleton of a "spook mentality" who saw conspiracies everywhere. The official said that Mr. Angleton was convinced that many members of the press had ties to the Soviet Union and was suspicious of anyone who wrote anything friendly about the Soviet Union.

Another former official characterized counterintelligence as "an independent power in the C.I.A. Even people in the agency aren't allowed to deal directly with the C.I. [counterintelligence] people."

"Once in it," he said, "you're in it for life."

Most of the domestic surveillance and the collection of domestic intelligence was conducted, the sources said, by one of the most clandestine units in the United States intelligence community, the special operations branch of counterintelligence. It is these men who perform the foreign wiretaps and break-ins authorized by higher intelligence officials.

#### 'Deep Snow Section'

"That's really the deep snow section," one high-level intelligence expert said of the unit, whose liaison with Mr. Helms was conducted by Richard Ober, a long-time counterintelligence official who has served in New Delhi for the C.I.A.

Despite intensive interviews, little could be learned about the procedures involved in the alleged domestic activities except for the fact that the operation was kept carefully shielded from other units inside the C.I.A.

One former high-level aide who worked closely with Mr. Helms in the executive offices of the agency recalled that Mr. Ober held frequent private meetings with Mr. Helms in the late sixties and early seventies.

"Ober had unique and very confidential access to Helms," the former C.I.A. man said. "I always assumed he was muckling about with Americans who were abroad and then would come back, people like the Black Panthers."

#### 'Nothing I Can Say'

The official said he had learned that Mr. Ober had quickly assembled "a large staff of people who acquired enormous amounts of data, more than I thought was justified."

After the unveiling of the domestic operations by Mr. Schlesinger last year, sources said, Mr. Ober was abruptly transferred from the C.I.A. to a staff position with the National Security Council.

"They didn't fire him," one well-informed source said, "but they didn't want him around. The C.I.A. had to get rid of him, he was too embarrassing, too hot."

The source added that Mr. Ober had vehemently defended his actions as justified by national security.

A Government intelligence official, subsequently asked about Mr. Ober, denied that his transfer to the National Security Council was a rebuke in any way.

Reached by telephone at his office this week, Mr. Ober refused to discuss the issue.

"There's nothing I can say about this," he said.

Mr. Angleton, also reached by telephone this week at his suburban Washington home, denied that his Counterintelligence Department operated domestically.

"We know our jurisdiction," he said.

Mr. Angleton told of a report from a United States agent in Moscow who was relaying information to the C.I.A. on the underground and radical bombings in the United States during the height of the antiwar activity.

#### A Source in Moscow

"The intelligence was not acquired in the United States," Mr. Angleton declared, "it came from Moscow. Our source there is still active and still productive; the opposition still doesn't know."

Mr. Angleton then described how the C.I.A. had obtained information from Communist sources about the alleged demolition training of black militants by the North Koreans. He also told of recent intelligence efforts involving the K.G.B. and Yasir Arafat, chairman of the Palestine Liberation Organization.

A number of former important F.B.I. domestic intelligence sources took issue with Mr. Angleton's apparent suggestion that the domestic antiwar activity was linked to the Soviet Union.

"There was a lot of stuff [on radicals in the United States] that came in from the C.I.A. overseas," one former official recalled, but he said a lot of it was worthless.

#### Amazement and Dismay

Other officials closely involved with United States intelligence expressed amazement and dismay that the head of counterintelligence would make such random suggestions during a telephone conversation with a newsmen.

"You know," said one member of Congress who is involved with the monitoring of C.I.A. activities, "that's even a better story than the domestic spying."

One former C.I.A. official who participated in the 1969 and 1970 White House-directed studies of alleged foreign involvement in the antiwar movement said that Mr. Angleton "undoubtedly believes that foreign agents were behind the student movement, but he doesn't know what he's talking about."

The official also raised a question about the bureaucratic procedures of the C.I.A. under Mr. Helms and suggested that his penchant for secrecy apparently kept the most complete intelligence information from being forwarded to the White House.

"We dealt with Ober and we dealt with Angleton on these studies, went over them point by point," the official said, "and Angleton, while not

exactly enthusiastic, signed off—that is, he initialed the study indicating that it represented the views of the Counterintelligence Department."

The former C.I.A. official said that he could not reconcile Mr. Angleton's decision to permit the studies, which reported no evidence of foreign involvement, while being involved in an elaborate and secret domestic security operation to root out alleged foreign activities in the antiwar movement. The results of the studies were forwarded to Henry A. Kissinger, then President Nixon's national security adviser.

A number of former F.B.I. officials said in interviews that the C.I.A.'s alleged decision to mount domestic break-ins, wiretaps and similarly illegal counterintelligence operations undoubtedly reflected, in part, the long-standing mistrust between the two agencies.

In 1970, Mr. Hoover reportedly ordered his bureau to break off all but formal liaison contact with the C.I.A., forcing lower level C.I.A. and F.B.I. officials to make clandestine arrangements to exchange information.

By the late sixties, one former F.B.I. official said, all but token cooperation between the two agencies on counterintelligence and counterespionage had ended.

"The C.I.A. was never satisfied with the F.B.I. and I can't blame them," the former official said. "We did hit-or-miss jobs."

#### 'Cutting Throats'

"We were constantly cutting the throats of the C.I.A. in our dealing with them. If the White House knew about it, they were too afraid of Hoover to do anything about it."

The former aide cited a case in the late sixties in which Mr. Angleton turned to F.B.I. for a domestic investigation because he "believed four or five guys were agents, including two guys still in the agency [C.I.A.] and three or four who had been high-level."

"They were suspected of having dealings with foreign intelligence agents," the former official said.

"We just went through the motions on our investigation. It was just a brushoff."

Before Mr. Hoover's decision to cut off the working relationship, the former official added, the F.B.I.—as the agency responsible for domestic counterintelligence—would, as a matter of policy, conduct a major clandestine inquiry into the past and present C.I.A. men.

Despite Mr. Hoover's provocative actions, the former F.B.I. man said, the C.I.A. still was not justified in taking domestic action.

"If they did any surreptitious bag jobs [break-ins]," he said, "they'd better not have told me about it."

NY Times

Thurs. 1/16/75

# C.I.A. Admits Domestic Acts, Denies 'Massive' Illegality

## COLBY TESTIFIES

Discloses Project Led  
to Amassing Files on  
10,000 Citizens

By SEYMOUR M. HERSH

Special to The New York Times

WASHINGTON, Jan. 15 — William E. Colby, Director of Central Intelligence, acknowledged at a Senate hearing today that his agency had infiltrated undercover agents into antiwar and dissident political groups inside the United States as part of a counterintelligence program that led to the accumulation of files on 10,000 American citizens.

But Mr. Colby, in a statement released after his appearance

this morning before the Senate Appropriations Intelligence Subcommittee, denied an allegation published in The New York Times that the Central Intelligence Agency had engaged in a "massive, illegal domestic intelligence operation."

"Whether we strayed over the edge of our authority on a few occasions over the past 27 years," he said, "is a question for those authorized to investigate these matters to judge."

### First Formal Response

In a 45-page statement, the first formal response by the C.I.A. to the published allegations of domestic spying, Mr. Colby acknowledged the following:

¶That at least 22 C.I.A. agents were recruited or inserted into "American dissident circles" as part of two separate programs by the agency to monitor such activities in the late nineteen-sixties and early nineteen-seventies.

¶That Richard Helms, the former C.I.A. director who is now Ambassador to Iran, authorized on Aug. 15, 1967, the establishment of a unit inside the agency's counterintelligence division "to look into the possibility of foreign links to American dissident elements."

¶That "in the course of this program, files were established on about 10,000 citizens in the counterintelligence unit." These files, which Mr. Colby said appeared to be "questionable" under the C.I.A.'s statutory authority, included materials generated by its agents in the

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field as well as reports forwarded from other Federal agencies. "Some police forces, and several Congressional committees or developed from news clippings, casual informants, etc."

"That the C.I.A. employed telephone taps 'directed against 21 residents of the United States between 1951 and 1965,' most of whom had a direct connection with the agency. Two of those taps, Mr. Colby said, were approved in advance by the Attorney General. The taps were on the phones of two private citizens who 'were thought to be receiving sensitive intelligence information.'"

"That the agency conducted three domestic break-ins in 1966, 1969 and 1971. A fourth attempt in 1971 was unsuccessful. In each case, the 'involved premises related to agency employees or ex-employees.'"

"That one former Congressman was included in the C.I.A.'s domestic counterintelligence file, and the agency does 'have other files on current or former members of Congress.' Some of the current files emanated from routine security clearance, but other members of Congress are being kept on file, he said, because 'their names were included in reports received from other Government agencies or developed in the course of our foreign intelligence operations.' Mr. Colby, in his report, specifically denied The New York Times's report of an allegation that at least one antiwar member of Congress had been

lar to that set up to look into the Watergate break-in.

Pending that development, Mr. Colby's testimony today before the Senate subcommittee, headed by Senator John L. McClellan, Democrat of Arkansas, was the first of what may be dozens of similar appearances for him.

Mr. Helms also appeared today before the Senate subcommittee.

After the three-hour session, Senator McClellan said the five-member subcommittee had unanimously agreed that "an independent full investigation should be made because the charges that have been made reflect on the integrity" of the C.I.A.

"It is imperative for the fiction to be separated from the facts," he told newsmen.

"We know that some mistakes have been made," he said, adding that they were not as "continuous and massive as have been alleged."

In a statement this afternoon, Senator William Proxmire, Democrat of Wisconsin, declared:

"No simple statement that the C.I.A. merely overstepped its bounds is adequate. Nor can we find solace in the fact that now the C.I.A. has stopped such questionable activities."

#### Asks Special Prosecutor

The Senator called anew for the establishment of a select committee and urged the appointment of "a special prosecutor to bring those who have violated this law to justice."

In his statement, Mr. Colby declared that all of the current activities of the agency "are within the limits of its authority."

had been assigned to that division.

In recently published testimony before the Senate Watergate committee, however, E. Howard Hunt Jr., one of the convicted Watergate burglars, said that he had been responsible for the secret financing of a Washington news agency as well as other domestic publishing ventures while serving as chief of covert action for the Domestic Operations Division from 1962 to 1966.

Mr. Colby said that in addition, the C.I.A. operated a separate Domestic Collection Division in 36 American cities that is currently responsible for maintaining liaison with American citizens who travel overseas as well as "assisting other C.I.A. activities by identifying individuals who might be of assistance to agency intelligence operations abroad."

In addition, the report revealed that the C.I.A.'s Office of Security had eight field offices operating under cover inside the United States. The offices, it said, are "primarily engaged in conducting security investigations of Americans with whom the C.I.A. anticipates some relationship."

It was this office and its concern for the safety of local C.I.A. installations, Mr. Colby said, that "inserted 10 agents into dissident organizations operating in the Washington, D.C., area."

The director said the undercover men were assigned to gather information relating to "plans for demonstrations, pickets, protests, or break-ins that might endanger C.I.A. personnel."

dissidents with whom they were in contact . . . and in the process the information was also placed in C.I.A. files."

Mr. Colby said further that two-thirds of the files on 10,000 persons that resulted from the special domestic counterintelligence program "originated [within the C.I.A.] because of specific requests from the F.B.I." The remaining third, he said, "was opened on the basis of C.I.A. foreign intelligence or counterintelligence information known to be of interest to the F.B.I."

The statement added that the domestic file program was reviewed in 1973 — after Mr. Helms left the agency for his post in Iran—and "specific direction given limiting it to collection [of information] abroad, emphasizing that its targets were the foreign links to American dissidents rather than the dissidents themselves."

In March, 1974, Mr. Colby added, he "terminated the program and issued guidance that any collection of counterintelligence information on Americans would only take place abroad" and at the specific initiation of the F.B.I.

Material in the files, he said, is now under review and those reports not justified by the agency's counterintelligence responsibilities are being eliminated.

"About 1,000 such files have so far been removed from the active index," he said, "but could be reconstituted should this be required."

#### Files Destroyed

He also confirmed that Department of Justice files pro-

specifically denied The New York Times's report of an allegation that at least one antiwar member of Congress had been placed under physical surveillance.

That physical surveillance of American citizens was conducted "on rare occasions" until as late as 1972 and usually against agency employees suspected of dealing with foreign agents. "In 1971 and 1972, physical surveillance was also employed against five Americans who were not C.I.A. employees" after the intelligence service received "clear indications" that the citizens were receiving classified information without authorization, the statement said. No further details were provided.

That the C.I.A. between 1953 and 1973 "conducted several programs" to survey surreptitiously and open the private mail of American citizens who were corresponding with certain Communist countries. One of the unspecified programs took place in 1969, 1970 and 1971.

At no point in his statement did Mr. Colby name any of the agents involved in the domestic activities, nor did he name any of the C.I.A.'s targets.

Under the National Security Act of 1947 setting up the C.I.A., the agency was forbidden to have "police, subpoena, law enforcement powers or internal security functions" inside the United States. These responsibilities have fallen to the Federal Bureau of Investigation, which maintains a special internal security unit to deal with foreign intelligence threats.

The charges of C.I.A. domestic spying are under investigation by five Senate and House committees and subcommittees, as well as by the eight-member bipartisan Rockefeller commission appointed by President Ford. The Senate is expected to consolidate its investigations by establishing a bipartisan select committee, simi-

declared that all of the current activities of the agency "are within the limits of its authority."

In his remarks about past practices, however, he said that, "if wrong," those wrongs "stemmed from a misconception of the extent of C.I.A.'s authority to carry out its important and primary missions—the collection and production of intelligence pertaining to foreign areas and developments."

At another point in his statement, the C.I.A. director noted that he had been "recently" advised by Laurence H. Silberman, the Acting Attorney General, "that I was obliged to call certain of these [past activities] to his attention for review."

"I have done so," Mr. Colby said, "although it is my opinion that none would properly be the subject of adverse action against men who performed their duties in good faith."

Mr. Colby's report did not discuss a number of the specific allegations published in The New York Times about the agency's domestic activities.

For example, The Times quoted well-informed Government sources as saying that C.I.A. agents had been authorized to photograph many participants in antiwar and other demonstrations.

Similarly, a former undercover agent told The Times in an interview published Dec. 29 that he was one of many agents ordered to penetrate radical groups in New New York while working for a branch of the C.I.A.'s clandestine services known as the Domestic Operations Division.

In his report, Mr. Colby said that the Domestic Operations Division, renamed the Foreign Resources Division in 1972, had representatives in eight American cities, "legally, ostensibly, to enable it to contact foreigners who might initially reject a C.I.A. connection." But he neither denied nor confirmed reports that some undercover domestic operatives

plans for demonstrations, pickets, protests, or break-ins that might endanger C.I.A. personnel."

The program, which began in 1967 and ended some time in 1968, he said, provided reports to the F.B.I., the Secret Service and local police departments. It was unclear how the Office of Security's undercover operations were connected to the large-scale monitoring of dissidents that had begun—also in 1967—by the Counterintelligence Division.

#### Concern on Dissidence

In an extensive analysis of the allegations published in The Times about files on 10,000 Americans, Mr. Colby suggested that the C.I.A.'s special office to investigate the foreign links to American dissidents had been set up in 1967 by Mr. Helms as a result of the Johnson Administration's concern "about domestic dissidence."

That office was set up, Mr. Colby said, less than three weeks after President Johnson appointed a national advisory commission on civil disorders. "The obvious question was raised as to whether foreign stimulation or support was being provided to this dissident activity," Mr. Colby said.

His statement did not cite any specific Presidential authority for the decision, made by Mr. Helms, to initiate the special activity in 1967.

"The program was conducted on a highly compartmented basis," he said. "As is necessary in counterintelligence work, the details were known to few in the agency."

At some point, he said, "the agency also recruited or inserted about a dozen individuals into American dissident circles." But he depicted this program as designed to establish "credentials" for operatives who were being sent abroad.

Nonetheless, his statement said, "some of these individuals submitted reports on the activities of the American dis-

#### Files Destroyed

He also confirmed that Department of Justice files provided to the agency in 1970 "could not be integrated" in the C.I.A.'s counterintelligence files and were destroyed last year.

"It was not the same file program described above," he said, in an apparent allusion to press reports last week suggesting that the C.I.A.'s files had, in fact, been supplied by the Justice Department.

At one point in his statement, Mr. Colby digressed, as he put it, to note that the fact "that there is a 'file' somewhere in one of our various record systems with a person's name on it does not mean that that 'file' is the type of dossier that police would use in the course of monitoring that person's activities."

Some operational files must be maintained to carry out the C.I.A.'s mission, he said. But then he discussed other files—which he said "appear questionable"—that have been eliminated in the last three years. It was not clear from his statement how these files, compiled on the basis of reports from informants and local police agencies, related to the files on 10,000 persons that were assembled by the Counterintelligence Division.

The special unit set up in 1967 reportedly was headed by Richard Ober, a long-time counterintelligence official who was shifted to the National Security Council in 1973, where he is now assigned.

Mr. Colby concluded his statement with a request that Congress pass legislation "to strengthen our ability to protect these secrets necessary to successful intelligence operations." Existing legislation, he said, is inadequate because it provides for a limited retention in the event of the disclosure of intelligence information "only if the disclosure is made to a foreigner or is made with an intent to injure the United States."



# Text of Report by Colby in Response to Charges of Domestic Spying by C.I.A.

Special to The New York Times

WASHINGTON, Jan. 15—Following is the text of a report by William E. Colby, director of Central Intelligence, responding to charges of illegal domestic surveillance by the agency, which he submitted to the Senate Appropriations Committee today:

I welcome this opportunity to appear before the committee today to answer and to place in perspective a series of allegations regarding C.I.A. activities in the United States that have appeared recently in certain publications. I flatly deny the charge in The New York Times of Dec. 20, 1974, that "the Central Intelligence Agency, directly violating its charter, conducted a massive illegal domestic intelligence operation during the Nixon Administration against the anti-war movement and other dissident groups in the United States..."

These charges impugn the integrity of a large number of people who have served this country faithfully and effectively for many years. They also damage the credibility of the C.I.A. at home and its effectiveness abroad.

Mr. Chairman, any institution—in or out of Government—that has been functioning for over a quarter of a century (as the C.I.A. has) would be hard put to avoid some wrong steps. But any steps over the line in C.I.A.'s 27-year history were few and far between and if wrong stemmed from a misconception of the extent of C.I.A.'s authority to carry out its important and primary mission—the collection and production of intelligence pertaining to foreign

giving your staff of our reply to a request from The New York Times reporter that I give him all our available information on this subject under the present Freedom of Information Act. You will note that The New York Times and we are equally concerned with the protection of our sources. To this committee I will of course be fully responsive, and I would hope thereby not only to reassure the committee but to secure greater public and press understanding of C.I.A.'s need for protection of its sources, too.

Mr. Chairman, while it is familiar to you, I would like to take a few moments to draw a framework for your inquiry by giving a brief description of the C.I.A.—its authority under the law, its mission, and the intelligence process itself.

I shall then describe the activities of the agency which do take place within the United States to demonstrate their contribution to the foreign intelligence mission of C.I.A.

I shall follow this with a discussion of the allegations in The New York Times of 22 December 1974 and in subsequent articles.

I shall conclude with some suggestions that might be useful to the committee.

## THE C.I.A., AUTHORITY AND BACKGROUND

C.I.A.'s existence and authority rest upon the National Security Act of 1947. The act provides that the agency will "correlate and evaluate intelligence re-

to its decision-making processes. The duties of the Director of Central Intelligence have also grown, and particularly his role as coordinator of all the intelligence efforts of the U.S. Government.

Intelligence today is no simple, single-dimensional activity. It is primarily an intellectual process involving:

- (1) The collection and processing of raw information.

- (2) Analysis of the information and development of reasoned judgments about its significance.

- (3) The dissemination and presentation of these findings to those needing them.

The process involves a number of different departments and agencies which, together, we call the intelligence community.

Our "overt" collection includes, for example, monitoring public foreign radio broadcasts, press, and other publications, excerpts of which are produced by C.I.A. as a service of common concern for the other members of the community.

Other overt collection is done by State Department Foreign Service officers, Treasury Department representatives, and defense attachés abroad.

Great technological advances have revolutionized intelligence over these years. The advent of sophisticated technical collection systems has enabled us to know with certainty many things which a decade ago we were debating on the basis of bits of circumstantial evidence.

This technology has been introduced

age the credibility of the CIA and its effectiveness abroad.

Mr. Chairman, any institution—in or out of Government—that has been functioning for over a quarter of a century (as the C.I.A. has) would be hard put to avoid some wrong steps. But any steps over the line in C.I.A.'s 27-year history were few and far between and if wrong stemmed from a misconception of the extent of C.I.A.'s authority to carry out its important and primary mission—the collection and production of intelligence pertaining to foreign areas and developments. Certainly, at this time, it is my firm belief that all activities of the agency are within the limits of its authority.

I, therefore, welcome the opportunity this inquiry offers to restore public confidence in the C.I.A. and to make its work more effective in the future within the constraints of our Constitution and laws. The employees of the agency and I are wholly committed to being responsive to this committee in full confidence that a thorough understanding of the intelligence process of the United States and the role of the C.I.A. will:

(1) Demonstrate the value and importance of the intelligence work of the agency.

(2) Reassure you as to the general propriety and legality of the agency's activities over the years.

(3) Help you to formulate legislation to improve the procedures and arrangements that govern the agency's activities.

In this process, Mr. Chairman, we hope also to answer the charges made in The New York Times and other publications on this subject. I am not sure that we will answer them all, because I note that The New York Times has indicated its disinclination to reveal the names of those making the charges it reported. Thus we may not be able to track down the specific situations cited to tell whether the charges were well-founded or not. You might be interested, Mr. Chairman, in a copy I am

submitting to you and to the committee in subsequent articles.

I shall conclude with some suggestions that might be useful to the committee.

## THE C.I.A., AUTHORITY AND BACKGROUND

C.I.A.'s existence and authority rest upon the National Security Act of 1947. The act provides that the agency will "correlate and evaluate intelligence relating to the national security, and provide for the appropriate dissemination of such intelligence within the Government...."

The act calls for the agency to perform certain services of "common concern as the National Security Council determines can be more efficiently accomplished centrally" and "to perform such other functions and duties related to intelligence affecting the national security as the National Security Council may from time to time direct."

The act provides that "the agency shall have no police, subpoena, law enforcement powers or internal security functions." Those are the responsibility of the F.B.I. and other law-enforcement authorities. In its use of the term "intelligence" in connection with C.I.A. activities, thus, the act implicitly restricts C.I.A. to the field of foreign intelligence.

Another proviso is that "the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure...." Incidentally, the director is the only Government official specifically charged by statute to protect intelligence sources and methods.

The C.I.A. Act of 1949 provides that, in order to implement the above proviso and in the interests of the security of the foreign intelligence activities of the United States, the agency is exempted from the provisions of any "law which requires the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the agency...."

In the intervening years since 1947, as the international role and responsibilities of the United States have grown, so has the importance of intelligence

Other overt collection is done by State Department Foreign Service officers, Treasury Department representatives, and defense attaches abroad.

Great technological advances have revolutionized intelligence over these years. The advent of sophisticated technical collection systems has enabled us to know with certainty many things which a decade ago we were debating on the basis of bits of circumstantial evidence.

This technology has been introduced at high cost. Collection systems being employed today have required hundreds of millions of dollars and substantial numbers of people to analyze the information they deliver.

But overt and technical collection cannot collect the plans and intentions of a hostile general staff, sense the political dynamics of closed authoritarian societies, or enable us to anticipate new weapons systems during the research phase before they are developed and visible. For this clandestine collection is needed, especially by human sources.

The immense flow of data from these collection systems must be correlated, evaluated, and analyzed to understand its true significance. Since the responsibilities of our policy makers cover such a wide range of international subjects these days, intelligence must employ the analytical services of professionals with specialized backgrounds in politics, economics, the sciences, military strategy, geography, and other disciplines. C.I.A. alone, for example, employs enough expertise in these fields to staff the faculty of a university.



Other agencies play essential roles in intelligence work, but C.I.A. has three major functions:

(1) To produce intelligence judgments, based on information from all sources, for the benefit of policy makers. The product is in the form of publications and bulletins on current developments, estimates of future international situations, and in-depth studies on various topics—for example, a study of the origins and growth—over time—of potentially hostile strategic weapons programs.

(2) To develop advanced technical equipment to improve the collection and processing of U.S. intelligence.

(3) To conduct clandestine operations to collect foreign intelligence, carry out counterintelligence responsibilities abroad, and undertake—when directed—covert foreign political or paramilitary operations.

## SECURITY AND COUNTERINTELLIGENCE

I have already mentioned my responsibility for protecting intelligence sources and methods. It is out of this responsibility, and because of the need to protect the nation's intelligence secrets, that C.I.A. has built over the years a capability, using security and counterintelligence techniques, to protect those secrets and guard against penetration of our intelligence activities.

A degree of secrecy, and an ability to protect some secrets, is essential to our work. This literally can be a matter of life and death for agents operating abroad, whether they be our own employees whose identification with C.I.A. would make them obvious targets for terrorists, or citizens of totalitarian regimes who have agreed to report to us on their own governments.

Many of the American businessmen and professors who voluntarily share their foreign experiences with us want the relationship to remain confidential, and we must protect their proprietary information which sometimes comes our way in the course of such exchanges.

Disclosure of the details of sophisticated and costly technical collection operations would tell another country for instance, just how to change its procedures in order to deny us reliable assessments of its military threat. Finally, no foreign government can be expected to continue intelligence cooperation and exchange with us unless it is confident that we can keep its secrets.

There is an obvious potential conflict here with the right of citizens in a democracy to know what their Government is doing in their name (and with their money). We are trying to reconcile this by making as much as possible of the substantive product of intelligence activities available to the general public as well as to Government officials.

We are also trying to describe publicly general intelligence activities conducted by the U.S. Government. But we cannot relax, and indeed must intensify, efforts to preserve the secrecy of operational details. Our efforts on these lines concentrate on assuring us of the integrity of those we employ or work with, to provide indoctrination in and monitor our procedures to keep our secrets, and investigate weaknesses or leaks in our security system. We have requested improvements in our legislative tools for this purpose, and I shall be asking your support for some of these efforts.

Counterintelligence is also a part of the intelligence process. Counterintelligence protects against espionage, sabotage, or subversion. An excellent example was the recently published British takeover of German intelligence in Britain during World War II. This resulted from effective security work in Britain aided by information obtained by agents

Counterintelligence activities in this country, for our internal security, are the responsibility of the F.B.I.

However, the National Security Council has directed C.I.A. to conduct "clandestine counterintelligence outside the United States." The purpose is to help protect against foreign damage to American personnel, installations, information, and intelligence activities.

The National Security Council also assigned to C.I.A. the task of maintaining central files and records of foreign counterintelligence information for the benefits of all interested agencies.

In practice, counterintelligence involves a close working relationship between the C.I.A. and the F.B.I.

## ACTIVITIES WITHIN THE UNITED STATES

C.I.A. of course carries out certain activities within the United States. About three-fourths of its employees live and work in this country. Most are in the metropolitan Washington headquarters area, performing analysis, staff direction, or administrative support.

About 10 per cent of C.I.A.'s employees work in the United States outside the headquarters area. They carry on activities related to or supporting our foreign intelligence mission which must be done here, such as personnel recruitment and screening, contracting for technical intelligence devices, or collecting foreign intelligence available here.

Clearly much information on the world is available here from private American citizens and from foreigners, and it would be foolish indeed to spend large sums and take great risks abroad to obtain what could be acquired cheaply and safely here.

C.I.A.'s Domestic Collection Division has representatives in 36 American cities. Its representatives contact residents of the United States who are willing to share with their Government information they possess, on foreign areas and developments. These American sources provide their information voluntarily, in full awareness they are contributing information to the Government. The division assures them that their relationship with C.I.A. will be kept confidential and that proprietary interests (say, on the part of a businessman) will not be compromised. We of course maintain records of the individuals and organizations we contact.

These offices also assist other C.I.A. activities by identifying individuals who might be of assistance to agency intelligence operations abroad and by resettling foreign defectors who take up residence in the United States.

C.I.A.'s Foreign Resources Division was known until 1972 as the Domestic Operations Division. Its principal mission is to develop relationships with foreigners in the United States who might be of assistance to our collection of intelligence abroad. In this process, it also collects foreign intelligence from foreigners in the United States. It has offices in eight U.S. cities, but it works under some name other than C.I.A., to enable it to contact foreigners who might initially reject a C.I.A. connection.

The work of this division is closely coordinated with the F.B.I., which has the responsibility for identifying and countering any foreigners working within the U.S. against our internal security.

Our cover and commercial staff conducts the agency's cover program, and handles our ostensibly private commercial and funding activities to support our operations. It negotiates with other U.S. Government departments and agencies on official cover arrangements and with cooperating U.S. business firms on private cover arrangements. An example of the work of this staff is an arrangement with a corporation, either an independent firm or a wholly owned proprietary, to provide the ostensible source of income and rationale for a C.I.A. officer to reside and work in a foreign country.

The agency's Office of Security has eight field offices in the United States primarily engaged in conducting security investigations of Americans with whom the C.I.A. anticipates some relationship—employment, contractual, informational, or operational. The investigators do not normally identify themselves as C.I.A., but do act as U.S. Government representatives whenever possible.

The Office of Security investigates all applicants for employment with the agency, actual or potential contacts of the agency, and consultants and independent contractors, to determine their reliability prior to their exposure to sensitive matters in dealings with the agency. We also conduct investigations of individuals employed by contractors to the agency, such as the employees of Lockheed who worked on the U-2 program. Numerous files are, of course, built up in this activity, but are kept segregated from the agency's operational and counterintelligence files.

Another responsibility of the Office of Security is the investigation within the Government of unauthorized disclosures of classified intelligence. This function stems from the director's statutory responsibility to protect intelligence sources and methods. Thus, the C.I.A. Office of Security would prepare a damage assessment and endeavor to determine the source of a leak so that we could take corrective action. The National Security Act of 1947 gives the director authority to terminate the employment of an individual with the agency when he deems it "necessary or advisable in the interests of the United States . . ."

Research and development are necessary activities if we are to have the technical intelligence capabilities I discussed earlier. Nearly all such work is done for the C.I.A. through contracts with U.S. industrial firms or research institutes. In many such contracts, C.I.A. sponsorship of the project is not concealed. But in some cases, the fact that the work is being done for the C.I.A.—or even for the Government—must be hidden from many of the individuals working on the program. This was the case in the development of the U-2 aircraft, for example.

In such cases, a separate organization within an existing company may be established by the company to conduct the necessary R&D under a cover story of commercial justification. Management of the entire program is organized in a fashion which isolates it from any association with the C.I.A. or the Government.

In order that such operations can take place, special cover mechanisms must be established to handle such problems as funding and security investigations of personnel being assigned to the job. Because of the agency's ability to operate such arrangements, it has also undertaken such activities in the field of intelligence on the basis of funding made available from the Department of Defense.

Indeed, though the C.I.A.'s own R&D program is a vigorous one, it is very small compared with the several large programs conducted in conjunction with the Department of Defense. All such



activity is subject to regular and systematic review and audit. This activity represents another category of our domestic activities, bringing the agency into contact directly or indirectly with large numbers of U.S. citizens and requiring it to keep a large number of records involving U.S. citizens and organizations.

Another area of research activity entails the capabilities of the American scientific, technical and other research communities to assist the research of some new foreign technical field, or to help analyze complex data coming into C.I.A.'s possession. These sorts of research projects or studies can be misunderstood, as recently occurred with respect to one on foreign transportation technology. Current criticism has confused C.I.A.'s solicitation of bids for such a study with a program to spy.

This confusion stems from a lack of appreciation of the modern intelligence process, in which "spying" plays only a small role. In fact, this project, and others similar to it, are purely analytical in character and involve no espionage or active intelligence collection by the contractor. Some such contracts do include analysis of information provided by C.I.A. from its secret technical or clandestine sources.

The agency's Office of Personnel maintains 12 recruitment offices in the United States (whose telephone numbers can be obtained from the public telephone directory). These agency recruiters identify themselves as C.I.A. personnel representatives and carry C.I.A. credentials.

In addition, other agency representatives enter into confidential arrangements with some U.S. residents who agree to assist in the conduct of our foreign intelligence responsibilities. Since most of our professional applicants come from college campuses, primarily at the graduate level, our recruiters maintain close contact with college placement officials and faculty advisers.

To round out our recruitment effort they also maintain contact with personal representatives of private industry, professional and scientific associations, minority organizations, and the like.

The agency must train its employees in those disciplines which are unique to its mission, ranging from clandestine operations to intelligence analysis and technical skills. We also offer an extensive program in language training, communications, and the normal administrative and management courses associated with Government operations. To this end we operate several training sites and occasionally take advantage of a large U.S. city environment to expose a trainee to the difficulties of foot surveillance. In such instances, the subject would be another agency employee participating in the training exercise.

The activities I have just described carry out the major programs of the agency which call for the operation of field offices in the United States. They all are proper under the act which governs us.

Now, let me turn to the recent press allegations.

### **Allegations and Some Details**

The article of Dec. 22, 1974, charged that C.I.A. has engaged in a "massive illegal domestic intelligence operation." The article referred in particular to files concerning American dissident groups.

The facts are these:

In mid-1967, the U.S. Government was concerned about domestic dissidence. You will recall that President Johnson on July 27, 1967, appointed a National Advisory Commission on Civil Disorders. The obvious question was raised as to whether foreign stimulation or support was being provided to this dissident activity.

On Aug. 15, 1967, the director established within the C.I.A. Counterintelligence Office a unit to look into the possibility of foreign links to American dissident elements. The executive director of the national advisory commission wrote to the director on Aug. 29, 1967, asking what the agency might do to assist in that inquiry with "information, personnel, or resources."

The director responded on Sept. 1, offering to be helpful, but pointing out that the agency had no involvement in domestic security. Some limited material from abroad, the director wrote, might be of interest.

Later the same year, the C.I.A. activity became part of an interagency program, in support of the national commission, among others.

Periodically thereafter, various reports were drawn up on the foreign aspects of the antiwar, youth and similar movements, and their possible links to American counterparts. Specific information was also disseminated to responsible United States agencies.

In September, 1969, the director reviewed this agency program and stated his belief that it was proper "while strictly observing the statutory and de facto proscriptions on agency domestic involvement."

In 1970, in the so-called Huston plan, the directors of the F.B.I., D.I.A., N.S.A., and C.I.A. recommended to the President an integrated approach to the coverage of domestic unrest. While not explicit in the plan, C.I.A.'s role therein was to contribute foreign intelligence and counterintelligence to the joint effort.

The Huston plan was not implemented, but an interagency evaluation committee, coordinated by Mr. John Dean, the Counsel to the President, was established. The committee was chaired by a representative of the Department of Justice and included representatives from F.B.I., D.O.D., State, Treasury, C.I.A. and N.S.A. Its purpose was to provide coordinated intelligence estimates and evaluations of civil disorders, with C.I.A. supplying information on the foreign aspects thereof.

Pursuant to this, C.I.A. continued its counterintelligence interest in possible foreign links with American dissidents. The program was conducted on a highly compartmented basis. As is necessary in counterintelligence work, the details were known to few in the agency.

We often queried our overseas stations for information on foreign connections with Americans in response to F.B.I. requests or as a result of our own analyses. Most of these requests were for information from friendly foreign services, although there were instances

where C.I.A. collection was directed. In most cases the product of these queries was passed to the F.B.I.

In the course of this program, the agency worked closely with the F.B.I. For example, the F.B.I. asked the agency about possible foreign links with domestic organizations or requested coverage of foreign travel of F.B.I. suspects. The agency passed to the F.B.I. information about Americans it learned from its intelligence or counterintelligence work abroad.

The F.B.I. turned over to the agency certain of its sources or informants who could travel abroad, for handling while there. In order to obtain access to foreign circles, the agency also recruited or inserted about a dozen individuals into American dissident circles in order to establish their credentials for operations abroad. In the course of the preparatory work or on completion of a foreign mission, some of these individuals submitted reports on the activities of the American dissidents with whom they were in contact. Information thereby derived was reported to the F.B.I. and in the process the information was also placed in C.I.A. files.

In 1973 this program was reviewed and specific direction given limiting it to collection abroad, emphasizing that its targets were the foreign links to American dissidents rather than the dissidents themselves and that the results would be provided to the F.B.I.

In March, 1974, the director terminated the program and issued specific guidance that any collection of counterintelligence information on Americans would only take place abroad and would be initiated only in response to requests from the F.B.I. or in coordination with the F.B.I., and that any such information obtained as a byproduct of foreign intelligence activities would be reported to the F.B.I.

In the course of this program, files were established on about 10,000 citizens in the counterintelligence unit.

About two thirds of these were originated because of specific requests from the F.B.I. for information on the activities of Americans abroad, or by the filing of reports received from the F.B.I. for possible later use in connection with our work abroad.

The remaining third was opened on the basis of C.I.A. foreign intelligence or counterintelligence information known to be of interest to the F.B.I.

For the past several months, we have been eliminating material from this these files not justified by C.I.A.'s counterintelligence responsibilities and about 1,000 such files have so far been removed from the active index but could be reconstituted should this be required.

In 1967, the Department of Justice established an Interagency Domestic Intelligence Unit. In May, 1970, the Department of Justice provided us with a machine-tape listing of about 10,000 Americans developed by the I.D.I.U. The listing could not be integrated in C.I.A.'s files and was destroyed in March, 1974. It was not the same file program described above.

Mr. Chairman, concurrent with the counterintelligence program, beginning in 1967, C.I.A.'s Office of Security, acting on the basis of concern for the safety of agency installations in the Washington, D.C., area, inserted 10 agents into dissident organizations operating in the Washington, D.C., area. The purpose was to gather information relating to plans for demonstrations, pickets, protests, or break-ins that might endanger C.I.A. personnel, facilities, and information. The reports acquired were made available to the F.B.I., Secret Service, and local police departments. The program ended in December, 1968.

Mr. Chairman, let me digress here for a moment to comment on the word "files" which can mean different things to different people. In addition to the counterintelligence files we have discussed, an agency of the size of C.I.A. obviously must maintain large numbers of files.

The backbone of an intelligence operation, particularly a counterintelligence case, is detailed information—through which one can begin to discern patterns, associations, and connections.

In this sphere, therefore, any professional intelligence organization tries to systematically record all scraps of information. Thus whenever a name—anyone's name—a date, a place, a physical description, appears anywhere in any operational report, it is usually put into a cross-referenced master index.

Whenever there are one or more pieces of paper dealing primarily with a single individual—for whatever reason—there is probably, somewhere, a "file" on that individual; whether he be an applicant, an employee, a contractor, a consultant, a reporting source, a foreigner of intelligence interest, a foreign intelligence officer, or simply a person on whom someone else (such as the F.B.I.) has asked us to obtain information.



## Report:

# Instances Are Given for Basis of Break-In and Wiretapping Allegations

The fact that there is a "file" somewhere in one of our various records systems with a person's name on it does not mean that the "file" is the type of dossier that police would use in the course of monitoring that person's activities.

In this context, it is clear that C.I.A. does have material on large numbers of Americans, as applicants, current and ex-employees, sources and other contacts, contractors, government and contractor personnel cleared for access to sensitive categories of intelligence, references and other names arising during security investigations, individuals corresponding with us, etc.

Our operational files also include people who were originally of foreign intelligence interest but who later became U.S. citizens, such as Cuban or other emigres. I am sure you will find that most of these are unexceptionable and necessary to run an institution of the size and complexity of C.I.A., and that these records are maintained in ways which do not suggest that these names are suspect.

There have been lists developed at various times in the past, however, which do appear questionable under C.I.A.'s authority; for example, caused by an excessive effort to identify possible "threats" to the agency's security from dissident elements, or from a belief that such lists could identify later applicants or contacts who might be dangerous to the agency's security. They did not usually result from C.I.A. collection ef-

forts (although as I noted above, they sometimes did), but were compilations of names passed to us from other Government agencies such as the F.B.I., some police forces, and several Congressional committees or developed from news clippings, casual informants, etc. A number of these listings have been eliminated in the past three years, and the agency's current directives clearly require that no such listings be maintained.

The New York Times article on Dec. 22, 1974, made certain other charges: That at least one member of Congress had been under C.I.A. surveillance and that other Congressmen were in our "dossier" on dissident Americans, and that break-ins, wiretaps, and surreptitious inspection of mail were features of C.I.A. activities. Let me provide background on these allegations.

On May 9, 1973, the director issued a notice to all C.I.A. employees requesting them to report any indication of any agency activity any of them might feel to be questionable or beyond the agency's authority.

The responses led to an internal review throughout the agency, including the counterintelligence program described above.

The initial responses and our review of them culminated in fresh policy determinations and guidance issued in August, 1973, to insure that our activities remain within proper limits.

Let me discuss our findings with respect to the press allegations.

(1) The New York Times article of Dec. 22, 1974, declared: "At least one avowedly antiwar member of Congress was among those placed under surveillance by the C.I.A., the sources said." Mr. Chairman, our findings are that there is no—and to my knowledge never has been—surveillance, technical or otherwise, directed against any member

The New York Times article also indicated that "other members of Congress were said to be included in the C.I.A.'s dossier on dissident Americans." Mr. Chairman, our findings are that, with the exception of one former Congressman, no members of the 90th Congress which commenced on Jan. 10, 1967, or of any succeeding Congress, up to and including the 94th Congress, are included in our counterintelligence program's files. We do have other files on current or former members of Congress. These fall into categories such as ex-employees, some who were granted security clearances in pre-Congressional jobs, some who were sources or cooperated with us, some who appear as references in applications or security clearance procedures on our personnel, and some whose names were included in reports received from other Government agencies or developed in the course of our foreign intelligence operations.

The New York Times article also referred to "break-ins" and said no "specific information about domestic C.I.A. break-ins" could be obtained. Our internal investigations to date have turned up a total of three instances which could have been the basis for these allegations. Each of the three involved premises related to agency employees or ex-employees.

In 1966, a new agency employee, inspecting a Washington apartment he was thinking of renting, saw classified agency documents in the apartment, which was the residence of another employee. The new employee advised the C.I.A. security office. Subsequently, a security officer and the new employee went to the apartment, were admitted as prospective renters, and removed the documents.

The second instance occurred in 1969. A junior agency employee with sensitive clearances caused security concern by appearing to be living well beyond his means. Surreptitious entry was made into his apartment in the Washington area. No grounds for special concern were found.

The third instance occurred in 1971 in the Washington area. An ex-employee became involved with a person believed to be a foreign intelligence agent. Security suspicions were that the two were engaged in trying to elicit information from agency employees. A surreptitious entry was made into the place of business jointly occupied by the two suspects. Results were negative. An attempt to enter the suspect agent's apartment was unsuccessful.

The New York Times article also referred to wiretaps and said no specific information could be obtained. Our findings show that C.I.A. employed telephone taps directed against 21 residents of the United States between 1951 and 1965, and none thereafter. In each case the purpose was to check on leaks of classified information. All but two of the individuals concerned were agency employees or former agency employees, including three defectors (not U.S. citizens) and one contractor who was the mother of an employee. The two private citizens whose phones were tapped in 1963 were thought to be receiving sensitive intelligence information, and the effort was aimed at determining their sources. Our records show that these last two taps were approved by the Attorney General.

In 1965, President Johnson issued an order that there be no wiretaps in national security cases without the approval of the Attorney General. Only one of the operations mentioned above took place thereafter, in 1965, against a C.I.A. employee suspected of foreign connections. This operation was approved by the Attorney General.

The New York Times article also alleges physical surveillance (following) of American citizens. The agency has conducted physical surveillance on our employees when there was reason to believe that they might be passing information to hostile intelligence services. This was done on rare occasions, and in recent years only three times—in 1968, 1971 and 1972. In 1971 and 1972, physical surveillance was also employed against five Americans who were not C.I.A. employees. We had clear indications that they were receiving classified information without authorization, and the surveillance was designed to identify the sources of the leaks.

Also, in 1971 and 1972, a long-standing C.I.A. source—a foreigner visiting in the U.S.—told us of a plot to kill the Vice President and kidnap the C.I.A. director. We alerted the Secret Service and the F.B.I. and we carried out physical surveillance in two American cities. The surveillance came to involve Americans who were thought to be part of the plot—and the mail of one suspect was opened and read.

The New York Times article also refers to "surreptitious inspection of mail." From February, 1953, until 1973, C.I.A. conducted several programs to survey and open selected mail between the United States and two Communist countries. One occurred in a U.S. city from 1953 to February, 1973, when it was terminated. One took place during limited periods in one other area in November, 1969, February and May, 1970, and October, 1971. One other occurred in August, 1957.

The purpose of the first and extended activity was to identify individuals in active correspondence with Communist countries for presumed counterintelligence purposes, the results being shared with the F.B.I. The others were designed primarily to determine the nature and extent of censorship techniques. The August, 1957, case was to try to learn the foreign contacts of a number of Americans of counterintelligence interest. I repeat that there has been no mail survey in this country by C.I.A. since February, 1973.

## C.I.A. RELATIONSHIP WITH OTHER GOVERNMENT AGENCIES

In August, 1973, in connection with the review of all activities of the agency which might be considered questionable under the terms of its charter, C.I.A. made a review of its assistance to other Federal, state, and local government components.

Assistance to agencies with foreign operations and not involved in domestic law enforcement was generally continued, while assistance which could involve the agency even indirectly in law enforcement or similar activities was appropriately modified or terminated.

In discussing allegations of improper C.I.A. domestic activity, I wish to comment on "the Watergate affair." This topic has been the subject of extensive hearings by the Ervin committee and the four C.I.A. subcommittees of the Congress as well as by other investigations by the grand jury, the Department of Justice, and the special prosecutor. So I will comment only briefly on it. The allegations included a charge that C.I.A. had prior knowledge of the Watergate break-in and was somehow otherwise knowingly involved. While I have stated the C.I.A. made mistakes in providing certain equipment to Howard Hunt and in preparing a psychological assessment on Daniel Ellsberg, both in response to directives from the White House, we have no evidence, and none was developed in any of the hearings or inquiries I have just mentioned, to support the other allegations concerning C.I.A.

Aside from these two instances, the main C.I.A. role in Watergate was to refuse to be used in the cover-up and to avoid being misunderstood as involved. Most recent evidence clearly demonstrates C.I.A.'s noninvolvement rather than involvement in Watergate.

I think it is interesting in this connection that despite the fact that the profile and the provisioning were requested by the White House, questions as to the propriety of these actions were brought to the attention of senior officials of the agency by agency employees at the working level.

Mr. Chairman, since 1973, agency employees are instructed each year to bring either to my attention or to that of the Inspector General any activity which they think may be beyond C.I.A.'s proper charter.

For the committee's background, I would also like to mention the agency's relationships with American students and other associations and foundations, revealed in 1967 by Ramparts Magazine. The agency had developed confidential relationships with some officials of these groups to assist their activities abroad in exposing and counteracting Communist-controlled efforts to subvert international student and labor groups.

State Department Under Secretary Katzenbach chaired an interagency group which investigated this matter. The group's recommendations resulted in a ban on C.I.A. covert assistance to American educational or voluntary organizations, and these restrictions are reflected in internal agency regulations and policy.

The activities I have described to you in this statement relate to The New York Times allegations and were among those, as I have said, that were reported to the director by our officials and employees in 1973 in response to his notice to all employees asking them to report any and all activities that they or others might deem questionable. These were reported to the chairmen of the Senate and House Armed Services Committees — the Congressional bodies responsible for oversight of C.I.A. — in May, 1973.

These briefings were accompanied by my assurances that the agency's activities would be conducted strictly within its proper charter, and specific instructions were issued within the agency along these lines. Recently, I was advised by the acting Attorney General that I was obliged to call certain of these to his attention for review, and I have done so, although it is my opinion that one would properly be the subject of adverse action against men

who performed their duties in good faith.

Mr. Chairman, in this presentation I have endeavored to provide the committee with a frank description of our intelligence activities. That description is intended to demonstrate the importance of the C.I.A. and the rest of the intelligence community in assisting the Government in developing and implementing its foreign policy and alerting it to potential crisis or war. I would now like to summarize the situation and present some thoughts for the committee's consideration.

First, as I said at the outset, I flatly deny the press allegations that C.I.A. engaged in a "massive illegal domestic intelligence operation."

Whether we strayed over the edge of our authority on a few occasions over the past 27 years is a question for those authorized to investigate these matters to judge.

Mr. Chairman, any institution—in or out of Government—that has been functioning for 27 years finds it hard put to avoid some missteps, but I submit that any such missteps in C.I.A.'s history were few and far between, and were exceptions to the thrust of the agency's important and primary mission—the collection and production of intelligence pertaining to foreign areas and developments.

Certainly at this time it is my firm belief that no activity of the agency exceeds the limits of its authority under laws.

Against this background, I would, however, like to make some suggestions for the committee's consideration.

Several bills were introduced in the 93rd Congress to amend the National Security Act so as to clarify the extent of C.I.A.'s activities within the United States.

One of these amendments would add the word "foreign" before the word "intelligence" wherever it appears in the act, to make crystal clear that the agency's purpose and authority lie in the field of foreign intelligence.

Another amendment would amplify the current restrictions in law by specifying that within the United States the agency will not engage:

"In any police or police-type operation or activity, any law enforcement operation or activity, any internal security operation or activity, or any domestic intelligence operation or activity."

The agency fully accepts such amendments as a statement of prohibited activity and as a way to reassure any concerned that C.I.A. has no such function. Last July, I so testified before the Legislative Oversight Committee in the House and last September, I wrote to the chairman of the Legislative Oversight Committee in the Senate assuring him that the agency will abide by the letter and the spirit of the proposed amendments.

The prohibition in these bills is supplemented by the following additional proviso:

"Provided, however, that nothing in this act shall be construed to prohibit C.I.A. from protecting its installations or conducting personnel investigations of agency employees and applicants or other individuals granted access to sensitive agency information; nor from carrying on within the United States activities in support of its foreign intelligence responsibilities; nor from providing information resulting from foreign intelligence activities to those agencies responsible for the matters involved."

Again, we welcome this as a clear statement of what the agency properly does in the United States in support of its foreign intelligence mission. As I described to you earlier and explained in my confirmation hearings, these include:

(1) Recruiting, screening, training and investigating employees, applicants, and others granted access to sensitive agency information.

(2) Contracting for supplies.

(3) Interviewing U.S. citizens who voluntarily share with the Government their information on foreign topics.

(4) Collecting foreign intelligence from foreigners in the United States.

(5) Establishing and maintaining support structures essential to C.I.A.'s foreign intelligence operations.

(6) Processing, evaluating, and disseminating foreign intelligence, information to appropriate recipients within the United States.

I respectfully suggest that the committee might indicate its support of these or similar legislative amendments in its recommendations.

A separate matter of concern deals with the question of appropriate oversight of the agency. Within the executive department, the director is appointed by the President with the advice and consent of the Senate and serves "during the pleasure of the President of the United States and for the time being."

The President has appointed a foreign intelligence advisory board to assist him in supervising the foreign intelligence activities of the United States.

This board has a long and excellent record of reviewing the foreign intelligence activities of the United States—those in C.I.A. as well as the other departments and agencies.

The board has made a number of very important recommendations to the President and has stimulated and supported major advances in our intelligence systems.

The activities of the C.I.A. and the intelligence community are also reviewed by the Office of Management and Budget, to which the agency reports fully and through which the director's recommendations for the total foreign intelligence program are routed to the President.

General guidance of the C.I.A. and the intelligence community is provided by the National Security Council through the Assistant to the President for National Security Affairs and the National Security Council staff. The National Security Council is assisted by the National Security Council Intelligence Committee and by several other National Security Council committees.

Pursuant to a Presidential directive of 5 November 1971, reaffirmed by President Ford on 9 October 1974, the Director of Central Intelligence is also assigned a special role with respect to the intelligence community as well as the Central Intelligence Agency.

He is required to exercise positive leadership of the entire community and to recommend to the President annually the appropriate composition of the entire intelligence budget of the United States. He is directed to accomplish these with the advice of and through the United States intelligence board and the Intelligence Resources Advisory Committee, which includes the intelligence elements of the State, Defense, and Treasury departments, and other agencies concerned with intelligence.

In my view, Mr. Chairman, the arrangements for administrative supervision of the Central Intelligence Agency and the intelligence community by the Executive branch appear sufficient at this time.

As you know, Mr. Chairman, Congressional oversight of C.I.A. has long been handled with full recognition by Congressional leaders of the necessary secrecy of the agency's activities. C.I.A. reports, on all matters, including the most sensitive details, to the Special Subcommittee of the Armed Services and Appropriations committees of each house.



There are no secrets from these oversight committees, and between our meetings with the committees, we are in continuing contact with the staffs. As I have stated before, Mr. Chairman, I believe I have more than a duty to respond to these committees; I must undertake to volunteer to them all matters which are of possible interest to the Congress.

#### Need for Secrecy Stressed

The agency has reported publicly to other committees about matters which can be disclosed publicly, and it has reported extensively in executive session to other committees, providing classified and substantive intelligence appreciations of world situations. Over the years, a number of suggestions have been made within the Congress to revise the oversight responsibility, but to date none has been agreed, with the exception of the recently enacted amendment to the Foreign Assistance Act requiring that the Senate Foreign Relations Committee and the House Foreign Affairs Committee be briefed on our operations abroad, other than activities intended solely for obtaining necessary intelligence.

The agency's position has always

been that it will work with the Congress in any way the Congress chooses to organize itself to exercise its responsibilities for oversight and for appropriations. I do add, however, my earnest trust and request that these be conducted in a manner which will retain the secrecy of these sensitive matters.

This raises the final subject to which I invite the committee's attention—the need for legislation to strengthen our ability to protect those secrets necessary to successful intelligence operations.

It is plain that a number of damaging disclosures of our intelligence activities have occurred in recent years. One effect of this has been to raise questioning among some of our foreign official and individual collaborators as to our ability to retain the secrecy on which their continued collaboration with us must rest.

We certainly are not so insensitive as to argue that our secrets are so deep and pervasive that we in the C.I.A. are beyond scrutiny and accountability.

We of course must provide sufficient information about ourselves and our activities to permit constructive oversight and direction.

I firmly believe we can be forthcoming for this purpose, but there are certain secrets that must be preserved.

We must protect the identities of people who work with us abroad.

We must protect the advanced and sophisticated technology that brings us such high-quality information today.

To disclose our sources and methods is to invite foreign states (including potential enemies) to thwart our collection.

Our problem is that existing statutes do not adequately protect these secrets that are so essential to us.

They provide criminal penalties, in event of disclosure of intelligence sources or methods, only if the disclosure is made to a foreigner or is made with an intent to injure the United States. The irony is that effective criminal penalties do exist for the unauthorized disclosure of an income tax return, patent information, or crop statistics.

To improve this situation, we have proposed legislation, and I invite this committee to support the strengthening

of controls over intelligence secrets. As you know, executive branch recommendations on the precise wording and elements of this proposed legislation are under development at this time. I believe these recommendations could be fully compatible with the Constitution, with the lawful rights of intelligence employees and ex-employees, and with the independence of our judicial authorities.

I believe this matter to be as important as oversight by the executive and legislative branches. For effective supervision of intelligence activities and the need for effective secrecy must go hand in hand.

I am prepared to respond to any questions the committee may have and to make available employees of the agency for questioning.

As for ex-employees, I respectfully request—should the committee seek them as witnesses—that they be contacted directly by the committee. The agency no longer has authority over them, and I have directed that they not be contacted by the agency at this time in order to avoid any possibility of misunderstanding of such contacts.

I respectfully request an opportunity to review with the committee the details of testimony before a decision is made to publish them and perhaps reveal sensitive intelligence sources and methods.

In conclusion, Mr. Chairman, I sincerely believe that this committee will find with me that the agency did not conduct a massive illegal domestic intelligence activity, that those cases over its history in which the agency may have overstepped its bounds are few and far between and exceptions to the thrust of its activities, and that the personnel of the agency, and in particular my predecessors in this post, served the nation well and effectively in developing the best intelligence product and service in the world.

Lastly, I hope that this committee may help us to resolve the question of how, and consequently whether, we are to conduct an intelligence service in our free society, and recognize its needs for some secrecy so that it can help protect our freedoms and contribute to the maintenance of peace in the world.

# Text of Statement by Helms to Senators on C.I.A.

Special to The New York Times

WASHINGTON, Jan. 16—Following is the text of a statement today by Richard Helms, former Director of Central Intelligence, before the Senate Armed Services Subcommittee on Central Intelligence:

## Mr. Chairman:

We are here this morning for a straightforward purpose: To get at the facts bearing on the conduct of the Central Intelligence Agency in situations that have lately come under attack in certain quarters of the press and from some members of Congress.

All the members of this committee have devoted much, if not all, of their professional lives to the public service. I ask for the privilege to speak to you across the familiar ground of a shared experience. Before becoming an Ambassador, I spent 30 years in the intelligence service. For me and, I believe, for most of those who served with me in the Central Intelligence Agency, these were years of high meaning—serious work in the American interest.

I was and remain proud of my work there, culminating in my six and a half years as director. I believed in the importance to the nation of the function that the agency served. I still do: without regrets, without qualms, without apology.

If then a feeling of pride should hereafter pervade what I have to say about my direction of the agency and my exposition of its functions, I pray you will not interpret my attitude as self-serving. It is simply the way I feel about what I came to look upon not merely as a job, but rather as a calling—a profession, regulated as all professions are, by scruples, by honor, and by duty. In addition, the needs of the President were paramount, within the bounds of a statutory charter.

And if I should yield to indignation in my comments on the public turmoil that now surrounds the agency, it will be because I am indignant at the irresponsible attacks made upon the true ends of the intelligence function—attacks which, if suffered to pass unchallenged, could seriously damage the interests of the United States by impairing its ability to live safely in a world too much of which remains locked off in closed, fortress-like states.

## Provisions of the Law

The function—the work, that is—of the Central Intelligence Agency is well spelled out in the National Security Act of 1947, the same act that gave rise to the Defense Department as we know it today.

That law was passed after much debate. It has endured the test of time and nearly three decades of international turbulence.

Basically, the charge laid upon the agency—its controlling mission—is to collect, synthesize and evaluate information associated with foreign happenings that affect the national security. The finished product is passed directly to the President and the relatively few members

of his staff who are responsible for the conduct of our foreign policy and national defense.

It so happens that the word "foreign" does not appear in the act. Yet there never has been any question about the intent of the Congress to confine the agency's intelligence function to foreign matters. All the directors from the start—and Mr. Colby is the eighth in the succession—have operated on the clear understanding that the agency's reason for being was to collect intelligence abroad. The boundary has always been plain to them and to their staffs.

Those of us who were in one or another of the national intelligence services during the second world war remember well that when General Donovan first put forward the concept of a peacetime intelligence service agency in 1944, the idea was attacked in the press as a device for fastening a Gestapo on the nation.

It was precisely for the purpose of banishing such fears, however groundless, that the language of the founding act specifies that the Central Intelligence Agency would have no police, law enforcement, or subpoena power, and no internal security function.

To my certain knowledge, all the Directors of Central Intelligence in their turn accepted the division of the foreign and domestic intelligence and security tasks as an absolute—a separation confirmed by the mandate of Congress. Our work lay in foreign fields.

## Efforts Based in U.S.

So that there may be no misunderstanding, we all know that just as photographic satellites are launched from American soil, a considerable portion of our effort is based in this country. The agency is charged with collecting foreign intelligence domestically from United States citizens or residents traveling abroad.

Overseas activities may need a home base in this country and in any case are basically administered from headquarters in Virginia, where also are the bulk of our analytical and estimative personnel.

As I will describe in a minute, the interface with the Federal Bureau of Investigation is continuous and we have never in any way challenged their jurisdiction. And finally the Director of Central Intelligence has the statutory responsibility for the protection of intelligence sources and methods from unauthorized disclosure. But in all this the target remains abroad.

How then do we account for the phenomenon that finds an agency so chartered under a drum-fire of attack for allegedly engaging in domestic espionage and other illegal actions, in defiance of its statutory constraints?

There are, in my observation, two reasons for that:

One is that the American people in general and the press as an institution have traditionally been skeptical of any government operation

that is carried on in secrecy, especially in peacetime.

That distrust is a healthy one and the intelligence services should accept such skepticism as an inescapable occupational hazard. They are themselves, after all, essentially reporting services. Whenever they fail to read the signs correctly, or whenever they are guilty of some misfeasance in the conduct of their business, the press has a right, indeed a duty, to take them to task.

## Irresponsibility Alleged

This brings me to the second reason. The current attack aimed at the agency was in my opinion irresponsible.

The principal allegations remain unsupported, and, to the contrary, have been undermined by contrary evidence identified by the press itself. Yet these allegations, picked up and carried to the four corners of the earth, have brought undesired embarrassment and humiliation to the patriotic and dedicated men and women of the Central Intelligence Agency. And they seriously damage, at least temporarily, the function the agency is charged with performing in the national interest.

We in the intelligence community and the press in its world are both in the business of reporting information in the public interest. I say in all seriousness that for some of the press to pound the public with such a farrago of charges can only result in scarring the reputation of an arm of the government without serving a useful purpose.

I offer, if I may, another observation. It is that quite apart from the question of the motives that may or may not have fostered the attack on the agency, the press plainly lacked a firm understanding of the practices and precepts of American intelligence.

I see now, in hindsight, a fairly urgent need for educating the press, and through the press the American people, in the not particularly arcane distinctions that exist in the intelligence community.

If my estimate is correct, it took the more responsible elements of the press a full fortnight to grasp what has actually gone on inside the different parts of that community. If this distinguished panel should agree with me that much of ruinous misunderstandings of these past weeks could have been avoided if only the intelligence function had been more widely understood, then perhaps you will find a way to make certain the confusion will not be repeated.

## Two Parts of Budget

To begin with, there is the matter of straightening out the public conception of the various bodies that make up the intelligence community, the boundaries that separate them and the common concerns they share.

It is well known, to be sure, that our total Federal intelligence effort is both extensive and expensive. Not so well known is the fact that the Central Intelligence Agen-

cy's fraction of the total machinery, in terms of money, is only about 15 per cent.

The bulk of its budget is spent on the collection and assessment of information. In contrast, the counterintelligence side, the side that seems most to fascinate our critics, is small both in budget and in people. It has the highly professional job of detecting and countering foreign efforts to penetrate and subvert our institutions and policies.

In this task the counterintelligence branch must by law and necessity work closely with the Federal Bureau of Investigation. The F.B.I. handles the counterintelligence function inside our shores. The C.I.A. does the job abroad. Manifestly, since agents come and go, there has to be a continuous interchange of information between the two organizations, and an exchange of files as well.

Trust and confidence are the sovereign coinage in this work. One simply cannot pass such valuable people as identified foreign agents to and fro between the foreign and the home systems as the international and domestic air carriers do with their passengers. Our sources of intelligence would not last long if we were that indifferent.

I have a last point to make. In normal times few Americans would ever come within the purview of our foreign intelligence operations. That happened only when evidence appeared of their involvement with subversive elements abroad.

Until the recent past, such involvements were rare occurrences. Then in the late 1950's and early 1960's came the sudden and quite dramatic upsurge of extreme radicalism in this country and abroad, an uprush of violence against authority and institution, and the advocacy of violent change in our system of government.

By and in itself, this violence, this dissent, this radicalism were of no direct concern to the Central Intelligence Agency. It became so only in the degree that the trouble was inspired by, or coordinated with, or funded by, anti-American subversion mechanisms abroad. In such event the C.I.A. had a real, a clear and proper function to perform, but in collaboration with the F.B.I. the agency did perform that function in response to the express concern of the President. And information was indeed developed, largely by the F.B.I. and the Department of Justice, but also from foreign sources as well, that the agitation here did in fact have some overseas connections.

As the workload grew, a very small group within the already small counterintelligence staff was formed to analyze the information developed here and to give guidance to our facilities abroad. As you can see from the material furnished by the agency, the charter of this group was specifically restricted to the foreign field. How, then, is it possible to distort this effort into a picture of massive domestic spying?



# Baker Reports C.I.A. Compiled Dossiers on a Former Senate Aide and a Private New York Investigator

By NICHOLAS M. HORROCK  
Special to The New York Times

WASHINGTON, Jan. 16—Senator Howard H. Baker Jr. said today that his investigation into any Central Intelligence Agency involvement in Watergate had disclosed that the agency had compiled dossiers on a former Senate aide and a New York private investigator.

In a telephone interview at his home in Huntsville, Tenn., Senator Baker, a Republican, said that his investigation had found that the agency had dossiers on Bernard Fensterwald, a Washington, D.C., lawyer and former aide to the late Senator Edward V. Long, Democrat of Missouri, and on Arthur James Woolston-Smith, an officer of a New York City investigation and industrial security consulting concern.

"These were but two of the numerous indications our investigation turned up that the C.I.A. has engaged in widespread domestic activity," Mr. Baker said.

A spokesman for the C.I.A. declined to comment on the Senator's allegation.

A report on the agency's domestic activities released yesterday by William E. Colby, Director of Central Intelligence, acknowledged that the agency had kept files on several members of Congress and numerous dossiers on American citizens collected both by domestic spying operations and through agency employment checks.

Senator Baker said that his inquiry into C.I.A. activities, brought to an abrupt close by the demise last year of the Senate Watergate committee, of which he was vice chairman, had uncovered five areas that he believes require further investigation by a bipartisan select Congressional committee or some form of permanent intelligence oversight committee.

Mr. Baker said that he was "unabashed" in his desire to be part of a Congressional committee to investigate the agency. He added that though "I feel it may sound immodest, I think I'm one of the best qualified men in the Senate to delve into C.I.A. because I was one of the first to hear the animal crashing about in the forest."

## Senator Long's Activities

The Senator was referring to his suspicion in 1972 that there might be illegal intelligence and espionage activity going on in this country.

Both Mr. Fensterwald and Mr. Woolston-Smith said that they had no knowledge that the C.I.A. had maintained dossiers on them. "I don't doubt it and I don't care," said Mr. Woolston-Smith, a New Zealander who said his concern had done intelligence work for the United States Navy. Mr. Woolston-Smith, an officer of Science Security Associates, Inc., said he had warned the Democrats in April, 1972, that they might be the subjects of a sophisticated electronic surveillance plot.

Mr. Fensterwald said he had no "independent" knowledge that the C.I.A. had a dossier on him or that it had ever investigated him, but he speculated that he might have come under agency scrutiny when he was working for Senator Long's investigation of wiretapping and bugging in the mid-1960's.

"We were getting into C.I.A. wiretapping, pushing the Freedom of Information Act and investigating a U.S. Government plot to assassinate Fidel Castro and any one of these things could have attracted their attention," Mr. Fensterwald said. Last month, Time magazine reported that the C.I.A. had created a dossier on Senator Long during the same period.

The report on domestic activity released by Mr. Colby, current director of the C.I.A., acknowledged that the agency had voluminous files on American citizens as well as the 10,000 specialized dossiers on antiwar activists first revealed by The New York Times on Dec. 22.

Though a file on Mr. Woolston-Smith may have ended up in C.I.A. data vaults as a foreign national involved in intelligence work, the fact that there was a dossier on Mr. Fensterwald struck Senator Baker, as demanding more information. "We had no indication from the C.I.A. that Mr. Fensterwald had been involved in any foreign intelligence," he said.

## The Areas for Study

Mr. Baker, discussing the need for further investigation, said that one of the five proposed subjects was the destruction of tapes and documents.

On Jan. 24, 1973, Richard Helms, then director of the C.I.A., ordered the destruction of tapes of his personal office and telephone conversations dating back over several years. The tapes included conversations with President Nixon and other Administration leaders, according to Mr. Baker's Watergate report.

The destruction was carried out despite a request from the Senate majority leader, Mike Mansfield, Democrat of Montana, that the C.I.A. retain all evidence pertinent to the Watergate investigation. Mr. Helms later testified that the tapes had contained no Watergate material. "We ought to have further testimony on this from Helms's secretary and from the custodian of the tapes," Mr. Baker said.

Mr. Baker said that the volume of material destroyed was so great that "it took them several days to scissor the tapes and burn them."

"I don't charge Mr. Helms with any wrongdoing," he said. "I'm only sorry the Congress

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TRANSCRIPT  
STATEMENT OF  
GRAND JURY FOREPERSON

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

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In re:

MARIE THERESA TURGEON and  
ELLEN GRUSSE

Misc. No. NH-53

-----X

New Haven, Connecticut  
February 14, 1975

B e f o r e:

Hon. JON O. NEWMAN, U.S.D.J.

A p p e a r a n c e s:

For the Government:

WILLIAM DOW, III, Esq.  
Assistant U. S. Attorney  
New Haven, Connecticut

For Ms. Turgeon and Ms. Grusse:

MICHAEL AVERY, Esq.  
265 Church Street  
New Haven, Connecticut



1 MR. DOW: I have a motion, copies of which have been  
2 served on Mr. Avery, counsel for both the witnesses, Marie  
3 Theresa Turgeon and Ellen Grusse. The motion is to compel  
4 testimony and sets out the fact that witnesses were granted  
5 immunity by this Court yesterday, an immunity grant was given  
6 in this court, and subsequently ordered them to testify; that  
7 both witnesses subsequently appeared before the grand jury and  
8 refused to respond to questions that were put to them at the  
9 grand jury, and it also indicates that the grand jury then  
10 voted as to each witness to authorize me to litigate a motion  
11 to compel testimony.

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12 THE COURT: Are the witnesses present?

13 MR. AVERY: They are.

14 MR. DOW: I should also indicate, your Honor, and I  
15 think counsel for the witnesses and myself have agreed that there  
16 would be no need to establish the fact, we will stipulate to the  
17 fact that the witnesses were allowed to write down the questions  
18 that were directed to them while they were in the grand jury  
19 room, and after each question, the witness, each witness, was  
20 allowed to leave and to consult with counsel before returning  
21 to respond to the questions.

22 MR. AVERY: That's correct.

23 MR. DOW: What I would propose to do, your Honor,  
24 subject to other directions, would be to put on the reporter  
25 who was at the grand jury and to ask him to read from the -- from

the reporter's notes as to what was indicated to the witness, as to what the purpose of the grand jury investigation was, then to ask him to read the questions and the responses that were given. By necessity, there were some other things on the record, such as notation at the time the witness may have left and had come back.

I believe Mr. Avery and I have agreed that would be unnecessary to read into the record at this proceeding.

MR. AVERY: That's correct.

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ROY F. BROWN, called as a witness,  
having first been duly sworn by the Clerk of the Court,  
was examined and testified as follows:

THE CLERK: State your name and address.

THE WITNESS: Roy F. Brown. Middle Haddam,  
Connecticut.

DIRECT EXAMINATION

BY MR. DOW:

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MR. DOW: We have stipulated, I believe, that  
Mr. Brown is a court reporter and authorized to  
transcribe proceedings before the grand jury.

MR. AVERY: That is correct.

Q Did you have an opportunity to transcribe proceedings  
before the federal grand jury sitting in New Haven February 13?

A I had occasion to take down the stenographic notes of  
those. I have not transcribed the notes.

Q My mistake in terms of choice of words. You were  
present when the witness Marie Theresa Turgeon appeared before  
the grand jury?

A Yes.

Q From your notes, can you read to the Court whether at  
some point she was advised of the purposes of the investigation  
of the grand jury?

A Yes.

Q Could you do so?

Brown - direct

A Mr. Dow: "When you appeared before the grand jury on the 28th, you were advised that this grand jury was investigating the possibility of violations of the federal law that have occurred in the District of Connecticut. Do you understand that?"

Answer: "Yes."

Question: "And you are called as a witness to this grand jury because it's believed that you have some information that would be helpful to the grand jury in assessing, or in its investigation. Do you understand that?"

Answer: "Yes."

Question: "Okay. You have been brought before the Court today, the District Court, Judge Newman, and were granted an order -- immunity was granted to you, and you were ordered to testify or provide evidence to this grand jury. Is that so?"

Answer: "Yes."

Question: "That order and the grant of immunity removes any right on your part to refuse to answer on the basis of the fact that the questions -- the answers would tend to incriminate you. Do you understand that?"

Answer: "Yes, I do."

Question: "My understanding is that you have consulted with an attorney, correct?"

Answer: "Yes."

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Brown - direct

Question: "And that your attorney is outside today, and you discussed the matter of your testimony with him, is that right?"

Answer: "Yes."

Question: "Okay. I'm not asking you what you discussed."

Answer: "I know, I realize that."

Question: "Okay. When you were last here, I read to you from two separate statutes regarding perjury. Do you recall that?"

Answer: "Yes, I do."

Question: "Will it be necessary for me to read those again, or are you sufficiently -- do you have a sufficient recollection of them to keep them in mind during the course of your testimony?"

Answer: "Yes, I do."

Question: "My first question was whether or not you appeared before this grand jury on the 23rd of January, 1978?"

Answer: "Okay. Can I go consult with my attorney? Excuse me."

Q. What was the answer that the witness gave to that question when she reappeared in the grand jury room?

A. "Upon the advice of counsel, I respectfully refuse to answer the question on the grounds that it and these proceedings

Brown - direct

violate my rights under the First, Third, Fourth, Fifth, Sixth, Eighth, Ninth and Fourteenth Amendments to the United States Constitution, and under the United States Code, and for the reason that I believe I have been the object of illegal electronic and personal surveillance by the government, and for the reason that this proceeding and this question constitute an abuse of the grand jury process."

Q Was a subsequent question asked of the witness?

A Question: "Do you know May Kelly, who also is known as Katherine Ann Power; and Lena Paley, who is also known as Susan Edith Saxe; photographs of whom I will show you, which have been marked as WD number 1 for Saxe, and WD number 2 for Power?"

Answer: "I would like to consult with my attorney."

MR. DOW: The witness left the room at that point.

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Q What did she say when she returned?

A "Upon the advice of counsel, I respectfully refuse to answer the question on the grounds that it and these proceedings violate my rights under the First, Third, Fourth, Fifth, Sixth, Eighth, Ninth and Fourteenth Amendments to the United States Constitution, and under the United States Code, and for the reason that I believe I have been the object of illegal electronic and personal surveillance by the government, and for the reason that this proceedings and this question constitute

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Brown - direct

an abuse of the grand jury process."

Q Was another question asked?

A "Let me give you a little further information about what the scope of this inquiry by the grand jury is. Susan Edith Saxe, also known as Lena Paley, and Katherine Ann Power, also known as May Kelly, are charged with participating in a bank robbery in the State of Massachusetts in 1970, during the course of which a man's life was lost. It is believed that either or both Power and Saxe lived for a period of time in Connecticut, and that you knew them, and that you may have information as to other people who knew them who might have assisted or aided them while they were in this State, and might otherwise be guilty of some criminal involvement with them. That is the purpose of this grand jury inquiry.

"I'd like to know when you last saw either May Kelly, also known as Katherine Ann Power, or Susan Edith Saxe, also known as Lena Paley; where that was; when that was; who they were with; and -- I guess that will be enough."

Q What was the response to that question?

A The witness said, "When and where? Is that --", and I read the record back to the witness.

"May I consult with my attorney?"

Q She returned to the room at some point and said what?

A "Upon the advice of counsel, I respectfully refuse to

Brown - direct

answer the question on the grounds that it and these proceedings violate my rights under the First, Third, Fourth, Fifth, Sixth, Eighth, Ninth and Fourteenth Amendments to the United States Constitution, and under the United States Code, and for the reason that I believe I have been the object of illegal electronic and personal surveillance by the government, and for the reason that these proceedings and this question constitute an abuse of the grand jury process."

Q Was a subsequent question addressed to her?

THE COURT: Would you just reread the third question, not the explanation that preceded it about the bank robbery, but just the question itself?

THE WITNESS: "I would like to know when you last saw either May Kelly, also known as Katherine Ann Power, or Susan Edith Saxe, also known as Lena Paley; where that was; when that was; who they were with; and -- I guess that will be enough."

I should add the question was elaborated on after the witness asked to have it repeated.

Question: "When you saw them, where you saw them, specifically where, in terms of address, who they were with and where they were residing at the time."

Q My recollection is that you did indicate what the response was. The question subsequent to that response?

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Brown - direct

A "I feel compelled to advise you that, in my opinion, you are exposing yourself to the possibilities of a citation for contempt for refusal to obey the order that was given this morning to you by Judge Newman compelling your testimony. Are you aware of that, that you are exposing yourself to the possibility of being held in contempt, as Judge Newman explained it to you this morning?"

Answer: "As Judge Newman -- only in respect to the Fifth Amendment, I could be -- but certain aspects of the Fifth Amendment, I understand."

Question: "All right. It is my understanding that at some point in time you lived at 23 Marshall Street in Hartford, and that May Kelly, also known as Katherine Power, visited you there, most likely during the calendar year 1974.

"I would like for you to indicate to the grand jury whether or not that is so, and if so, when she came there, who was she with, how long she stayed, and where she was living? And by living, I mean residing at the time."

Q Did the witness leave the room subsequent to that question?

A We repeated the question to the witness, and then she left the room.

Q What was her response upon returning to the room?

A "Upon the advice of counsel, I respectfully refuse to

Brown - direct

answer the question on the grounds that it and these proceedings violate my rights under the First, Third, Fourth, Fifth, Sixth, Eighth, Ninth and Fourteenth Amendments to the United States Constitution, and under the United States Code, for the reason that I have been the object of illegal electronic and personal surveillance by the government, and for the reason that this proceeding and this question constitute an abuse of the grand jury process."

Q Was a subsequent question asked of her?

A Question: "During the course of their stay in Connecticut, it is my understanding that both Katherine Ann Power, known as May Kelly, and Susan Edith Saxe, known as Lena Paley, made known to certain acquaintances the fact that they were fugitives and charged with certain crimes. Do you know the individuals to whom they gave that information?"

Q The response to that question?

THE COURT: Are the responses always the same?  
Can counsel stipulate to that?

MR. AVERY: I wasn't there, so I only know what I advise people to say, but there was one question I know where the response might be different. As to Miss Turgeon, we stipulate that the answers were always the same.

MR. DOW: I am not sure how many further questions

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Brown - direct

there are. We can go through the course of the entire proceedings, if your Honor wishes.

MR. AVERY: I believe there is just one more question.

THE COURT: All right. We might as well have that one.

A Question: "Have you heard from or communicated with either Katherine Ann Power, known as May Kelly, and/or Susan Edith Saxe, known as Lena Paley, within the past three months, and if so, where did that communication take place, and do you know the present whereabouts of either or both of them?"

Q And the response was identical, I take it?

A After the witness returned, the response was identical, yes.

Q Did that terminate the questions directed to that witness?

A Questions as far as the --

Q Directed to the witness?

A Yes.

MR. DOW: Would it be appropriate at this time to ask for a ruling as to that particular witness --

THE COURT: We might as well have the whole record set out.

Q Subsequently, a Miss Ellen Grusse appeared before the

Brown - direct

grand jury, is that correct?

A Yes.

Q Could you read to his Honor the description of the scope of the inquiry of the grand jury that was given to Miss Grusse?

A Mr. Dow: "Miss Grusse, you last appeared before this grand jury on the 23th of January, 1975, at which time I advised you of what your rights were at that time concerning your Fifth Amendment right and your rights to the assistance of an attorney. I also advised you and read to you certain sections of the United States Code concerning perjury. Do you have a recollection of those sections of the Code, or will it be necessary for me to read them to you again?"

Answer: "I don't think -- it's not necessary."

Question: "You have appeared in court this morning and have received an order from Judge Newman, in which the government indicated -- prior to which the government indicated it was going to grant you immunity, what is commonly known as use immunity, and you were ordered to appear and provide -- and testify and provide evidence before this grand jury. Nevertheless, you have a right to an attorney, and it is my understanding you have consulted with an attorney, is that correct?"

Answer: "Yes."

Question: "And, in fact, your attorney is on the third



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floor of this building and is available for you to consult with him during the course of this questioning, correct?"

Answer: "Right."

Question: "I'm not asking you what was said between yourself and your attorney, all I want to establish is whether you have discussed the possible penalties involved, such as a finding of contempt, for failure to obey an order of the court? Do you understand that you could be held in contempt, for example, for refusing to obey a court order compelling you to testify, do you understand that?"

Answer: "Yes, I understand that."

Question: "When you appeared last time, I indicated to you that this is a federal grand jury sitting in New Haven, investigating possible violations of federal laws in the State of Connecticut.

"More specifically, the investigation concerning two fugitives, one by the true name of Katherine Ann Power, who uses the alias May Kelly; and a second, Susan Edith Saxe, who uses the alias Lena Paley. The investigation has revealed that there is a possibility they lived in Connecticut for a certain period of time over the past number of years. This grand jury is interested in investigating possible violations of federal criminal laws in terms of, but not limited to, violation of the harboring statute: that is, harboring a known felon -- it would

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be 18 U.S.C. 1071, and the accessory after the fact provision of the United States Code. Do you understand that?"

Answer: "Would you repeat the codes again?"

Question: "Yes. 18 United States Code Section 3, and 18 United States Code Section 1071. I can read them to you if you wish. If not, you can talk them over with your attorney. I don't care."

Answer: "I don't think that's necessary."

Question: "It's not necessary for me to read them?"

Answer: "No."

Question: "Okay. Miss Grusse, do you know, or are you acquainted with Susan Edith Saxe, who uses the alias of Lana Paley, or Katherine Ann Power, who uses the alias May Kelly, and if so, have you seen them in Connecticut, and do you know where they resided or stayed when they were in Connecticut, and also when is the last time you spoke with either or both of these individuals?"

"In order to assist you, I am going to show you photographs, WD number 1, which is a photograph of Susan Edith Saxe, and WD number 2, a photograph of Katherine Ann Power."

Answer: "Okay. I'd like to consult with my attorney."

Q Upon returning to the room, what was the response given by Miss Grusse to that question?

A Answer: "Upon the advice of counsel, I respectfully



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refuse to answer the question on the grounds that it and these proceedings violate my rights under the First, Third, Fourth, Fifth, Sixth, Eighth, Ninth and Fourteenth Amendments to the United States Constitution, and under the United States Code, and for the reason that I believe I have been the object of illegal electronic and personal surveillance by the government, and for the reason that this proceeding and this question constitute an abuse of the grand jury process. Also, I object on the grounds that the question is not limited as to any period of time."

Q Was there a subsequent question asked?

A We then recessed to return an indictment in another court. There was a certain colloquy between the witness and yourself before a question was directly asked.

Q I don't think that's germane to this proceeding as to whether or not she responded to questions.

MR. AVERY: I think we might have it, your Honor.

I'm not sure exactly what was said, but the instruction as to the purpose of the inquiry --

THE COURT: What do you understand it concerns?

MR. DOW: I believe it concerned a desire on behalf of the witness to make a statement, and the indication by me that the statement would not be appropriate at that time. We preferred to ask questions,

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and if she wished to make a statement, she could do so after the questioning terminated. That would be the gist, I think, of what that colloquy was.

THE COURT: There will be full opportunities here to give any reasons why they don't have to answer questions. I am more interested in what questions they decline to answer.

Q What was the next question directed to the witness?

A "Miss Grusse, have you ever met or come into contact with or had conversation with either Susan Saxe, with the alias of Lena Paley, or Katherine Ann Power, with the alias of May Kelly, at 118 Babcock Street in Hartford, 7 Putnam Heights in Hartford, or 1063 Capitol Avenue in Hartford; and that inquiry covers the years from 1973 to 19 -- through the present date, and if so, where, when and with whom did you have those discussions or conversations?"

Q What was the response to that question?

A "Answer: "I missed the middle part of that question."

Q When she returned to the room, the witness gave a response?

A Answer: "Upon the advice of counsel, I respectfully refuse to answer the question on the grounds that it and these proceedings violate my rights under the First, Third, Fourth, Fifth, Sixth, Eighth, Ninth and Fourteenth Amendments to the

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United States Constitution, and under the United States Code, and for the reason that I believe that I have been the object of illegal electronic and personal surveillance by the government, and for the reason that this proceeding and this question constitute an abuse of the grand jury process.

"Furthermore, I firmly believe that I have been called before the grand jury because I have chosen to exercise my right not to speak with the FBI. My decision not to speak to them is based on moral belief that the investigation the government is engaged in will violate my basic constitutional and human rights. I believe that the right to privilege -- I believe that the right to privacy goes beyond those traditionally recognized confidences, such as attorney-client or doctor-patient. I believe that every person has the right to keep her affairs private without intervention by government agents.

"I am also aware that the government, acting through the FBI and grand juries, has used inquiries such as this to harass and gather information on political persons in recent years, and I do not care to be party to that process.

"It's also true that there is no basis for investigating any criminal activity in the State of Connecticut, and that the grand jury system and you, the jurors, are being used as tools of the FBI to further their investigation. This is not a legitimate use of the grand jury, and I respectfully request

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that you excuse me on those grounds."

Q What was the next question that was put to Miss Grusse?

A The next question that you asked: "Is it my understanding, Miss Grusse, that you no longer wish to testify?" --

Q Her response?

A -- "I take it from your -- the reason I ask that question is because I take it from the last sentence of your statement, which you read to the grand jury, you indicated a desire to be excused from further testifying, I believe. Is that what you said?"

Answer: "I don't care to expand on what I have said in the statement. I think that's clear," --

Q What was the next question that was put to her?

A The next question by you?

Q Yes.

MR. AVERY: If your Honor please, it's my information at this juncture in the proceedings the foreperson of the grand jury also indicated his understanding of what the scope and purpose of the inquiry of the grand jury was, and I would submit it would be relevant to the Court to have that, since it has the Assistant U. S. Attorney statement, as well. Certainly, it would be part of our subsequent

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argument and that a grand juror's own understanding of what they were doing is relevant, particularly to our argument about abuse of the grand jury process, and I think that came at this point in the proceedings from the information I have.

THE COURT: Does that include specification of anything that as to which there is some significant interest against public disclosure?

MR. DOW: No, your Honor.

THE COURT: All right, if you can locate that.

A The last thing was the witness: "I don't care to expand on what I have said in the statement. I think that's clear, you know. If you want the statement repeated, I will be glad to do that."

The Foreman: "Could I ask one question? Do you understand the description of the reason that you are being called here, that Attorney Dow just stated? Do you understand that the purpose of this grand jury is to investigate a crime that was committed in Boston in 1970, and your possible knowledge of any of -- of any of the facts concerning the whereabouts of the people, the perpetrators of the crime? Do you understand that is the reason why you are being asked to be here?"

The Witness: "To answer that, I would really -- I would like to talk to my attorney, to answer that question."

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Mr. Dow: "Let me amplify that to a degree, if I could, Mr. Foreman, to indicate that the scope of the inquiry goes beyond the crime itself that was committed in Boston, but activities of the individuals believed to have committed those crimes in the State of Connecticut, such as involving -- such as possible assistance to those suspects by other individuals in the State.

"Is that your understanding?"

The Foreman: "That's right."

The Witness: "If you want me to answer that question, I would have to talk to my attorney at this time."

The Foreman: "It's all right with me."

Q Did she talk to her attorney at that time?

A The witness then left the room.

Q When she came back, what was her response?

A "Upon the advice of counsel, I respectfully refuse to answer the question on the grounds that it and these proceedings violate my rights under the First, Third, Fourth, Fifth, Sixth, Eighth, Ninth and Fourteenth Amendments to the United States Constitution, and under the United States Code, and for the reason that I believe I have been the object of illegal electronic and personal surveillance by the government, and for the reason that this proceeding and this question constitute an abuse of the grand jury process."

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Q My understanding is that terminated the questioning of Miss Grusse at that time, is that correct?

A Yes.

Q She was then excused, and the grand jury voted.

MR. DOW: That's what the government would present in support of its motion.

THE COURT: Anything further of this witness?

MR. AVERY: I have no questions of this witness.

(Witness excused.)

MR. AVERY: What I would like to do at this time is to articulate what the various objections that the witnesses have to answering the questions that were put to them are, and as I have previously indicated, both to the government and to your Honor in chambers, that will make this a brief articulation of what their claims are for two reasons: One is that with regard to some of the claims, we are not prepared to either put on evidence or go ahead with the full exploration of the claims today, and that would be left to a later proceeding, should there be one; and secondly, for the sake of eliminating redundancy. Some of the claims have been articulated to the Court before: and that that is we would claim that the previous denials of our motion for continuance and the previous denials of our motion to quash have, for the reasons

stated in those motions themselves, prejudiced the rights of the witnesses, and that, therefore, they would refuse to answer on those grounds.

The issues that were argued --

THE COURT: When you rely on those, I need to have some indication of what it is you need time to do, so if you have some claim in that regard, you ought to specify it. I am not going to withhold an order simply on the allegation that a motion for continuance was denied, so if you have some specification of what you need time to do, you ought to say so.

MR. AVERY: I did speak of that yesterday, your Honor, with particularity in my presentation on the issue of whether or not immunity should be granted, and there were issues that were raised yesterday, and I was coming to those issues just now that I would have appreciated an opportunity to brief, and would have briefed at that time, and that was -- one was the authority of the Assistant Attorney General to -- the acting Assistant Attorney General, to issue the authorization from Washington.

The second was that the government had failed to indicate the statutes in their motion on which they were making their claims as to a proper grand jury investigation and the public interest in having the witnesses' testimony compelled; and third related to the scope of the order that was entered by your Honor yesterday.

The fourth was the point that there had been no showing



of compliance --

THE COURT: These are objections to the immunity order?

MR. AVERY: Yes.

THE COURT: I understood you to say that you were concerned about the denial of a continuance.

MR. AVERY: The reason I was concerned about the denial of the continuance was that we were impeded in making our objections to the immunity order. There was nothing else going on yesterday except for the immunity order that was of any import.

Perhaps I don't understand the Court's question. I understood the Court's question to be --

THE COURT: Normally, when someone asks for a continuance so they can have time to do something, it's not just to secure a delay for delay's sake.

MR. AVERY: Of course not.

THE COURT: I want to know what it is that you think you need time to do.

MR. AVERY: That's what I was just trying to explain to the Court, that I felt I needed time to brief my objections --

THE COURT: To write a brief?

MR. AVERY: Yes.

THE COURT: You don't think you have had time since January 28 to do that?

MR. AVERY: Well, with regard to the January 28 issue,

Mr. Dow indicated to us on January 28 that at that time it was his intention to go ahead and ask for authorization from Washington to seek immunity. Certainly, it was not clear to us at that time that authorization would be granted from Washington, that he had the colorable claim that this was something that was in the public interest.

The same reasoning that led your Honor at the time we were first here to say that you would not rule on the scope of the inquiry question until after we heard what the questions were is also, of course, applicable to defense counsel, which is that we have -- although, of course, we have been preparing for such contingencies as we have had time to prepare for, we have not been able to prepare everything in advance, particularly with regard to events we had no assurance would actually happen.

Presumably, down in Washington, they are supposed to exercise some discretion over these matters, and it wasn't clear to us that they would grant this authorization, and that, in fact, was not clear to us until yesterday when we were handed the piece of paper.

Those were the arguments that we made yesterday with regard to immunity, and the further argument that because the motions for protective orders that we made were denied, in part, and the full scope of the relief that we sought was not granted, in part, that the immunity grant by the Court yesterday is not coextensive with the Fifth Amendment privilege, and it



would be our claim that in a sense, the immunity --

THE COURT: In what respect is it not coextensive?

MR. AVERY: The argument is that the protective orders would have insured the witness that the testimony would not be used in a subsequent proceeding, and that in the absence of such protective orders --

THE COURT: How would they do that?

MR. AVERY: Because the only evidence that could be used would be the evidence that was certified at the time, and if the evidence was certified prior --

THE COURT: Why is that so? Supposing they had done what you thought should be done, and what the Goldberg court suggested to the prosecutor that the prosecutor might do, and then there is a trial, let's say, of these witnesses, and then the government chooses to offer something that's not included in their certification, you then object and say you have got to show under the Kastigar rule that you have an independent source because it's not in your certification.

MR. AVERY: That's not what I would object and say.

THE COURT: You would say they are barred.

MR. AVERY: That's the order I asked for yesterday.

THE COURT: You mean to say that you think under Kastigar that if a witness has been given use immunity, and the government accepts your notion of a certification of presently available evidence, and a week later somebody comes to

the prosecutor and says, "I have got news for you, Miss so and so just killed somebody," that the government is barred from prosecuting on that evidence? Is that your claim?

MR. AVERY: That's my claim, the request --

THE COURT: I'm glad I understand it. What's the next claim?

MR. AVERY: May I elaborate a little on that claim?

THE COURT: Briefly. I don't think it needs much elaboration. The rule clearly says that the government has to demonstrate an independent source; there is no law at all that says the government is forever barred from getting evidence if it comes to it without any taint whatsoever by virtue of the compelled testimony. What you're pleading for is transactional immunity. You want to say that they can't prosecute.

MR. AVERY: We are asking, and the motion I filed yesterday clearly spelled that out, that we were asking that they be confined to the evidence that they certify at this time. Now, of course, it may be that in certain types of cases that's more appropriate than in others; this doesn't happen to be a murder case and --

THE COURT: You have no idea what evidence is going to come to the government's attention in the future.

MR. AVERY: If it's a crime that they are not asked questions about, then it's clearly irrelevant that they have testified. If it's some completely irrelevant crime, then this



whole proceeding is, of course, irrelevant to that prosecution.

THE COURT: Perhaps you are using relevancy in a way I don't understand. If your claim is that the government has to specify its available evidence against these witnesses, and can't prosecute them in the future for anything except based on that evidence, I'm not going to need much time for any briefs to deal with that argument.

MR. AVERY: I'm not saying prosecute them for them, that's not my claim. If they were to walk out of the courtroom and kill a stranger in the post office on their way out, that's -- that has nothing to do with this -- any testimony they might or might not give up here; but if it's prosecution for an offense which is related to the subject matter --

THE COURT: Then you want transactional immunity. That's what it comes down to.

MR. AVERY: No, it's not the same as transactional immunity, because under transactional immunity, they wouldn't be able to prosecute them at all. What I'm asking for, they would be able to prosecute them on the basis of the evidence they had at the time they gave their testimony.

THE COURT: If somebody walks in tomorrow, wholly unrelated to their testimony, and says, "I can now show you that they committed a crime that you're interested in," you want to say they can't prosecute?

MR. AVERY: That's right.

THE COURT: You will have to make that argument to the Supreme Court and get them to cut back on the Kastigar rule. You don't have to take my time with that argument.

MR. AVERY: The same argument applies with regard to the court order to order the transcript of testimony made available to witnesses at this time, because there is no assurance that they would get that in some subsequent --

THE COURT: All right.

MR. AVERY: In other words, the arguments that we made yesterday with regard to the immunity grants and the failure of the Court to grant the relief that we are seeking is one of the reasons why the witnesses continue to object to the question. Further objection --

THE COURT: Is that really so? By the way, for example, when you say that is one of the reasons that you recite these, and those reasons include the fact that the immunity order, the immunity approval that accompanied the U. S. Attorney's presentation was signed by an acting Assistant Attorney General, would the witnesses testify if it had been signed by the Attorney General personally?

MR. AVERY: We have several objections, we would have to get what we were seeking with regard to each of our objections --

THE COURT: Supposing every other objection were satisfied, and all that remained was your attack on the capacity of the acting Assistant Attorney General, would they then



testify?

MR. AVERY: And that were not resolved in our favor?

THE COURT: And then it was signed by the Attorney General personally?

MR. AVERY: And we had no other objections?

THE COURT: That's correct.

MR. AVERY: If we had no objections, I suppose they would testify, but some of the objections that we have are objections I don't see how the government can overcome. That type of hypothetical is not -- let me say, I don't understand the thrust of the Court's hypothetical.

THE COURT: I am trying to understand what the position of these witnesses is.

MR. AVERY: The position of the witnesses is they have several objections, some of which I have already stated, and some of which I am about to state, to testifying under the conditions that currently exist, and with regard to the type --

THE COURT: Some objections don't apparently matter, because they are so sure that the other objections can't be overcome.

MR. AVERY: I can't say that none of the objections don't matter. You pose the question that if we had no other objections, and if it were, in fact, signed by the correct Attorney General, would they testify; and that's almost total logic, if we had no objections, they would testify.

THE COURT: You say it's total logic. One of the issues is whether people who are supposed to do something are going to do it. It's by no means certain that they are going to. That's what I'm trying to understand.

MR. AVERY: They are not going to do it as long as they have what, in their opinion, and in the opinion of their counsel, are valid objections to doing it.

THE COURT: All right. What are their other objections?

MR. AVERY: The other objections are that the questions invade a constitutionally protected area of privacy of the witnesses, and that this area is protected by the constitutional amendments which are named in their answers to the questions.

THE COURT: Again, I don't know how much it's worth to explore these, but are they seriously suggesting the Fourteenth Amendment bars this?

MR. AVERY: I think that the Fourteenth Amendment is an amendment which is properly cited in the list of amendments which guarantee the --

THE COURT: It limits what a federal grand jury can ask, that's a serious contention put forward?

MR. AVERY: We are not going to pick apart amendment by amendment.

THE COURT: I didn't ask you to pick them apart. You are contesting in this court that you have some right to refuse the process of the grand jury in this court, and if you are just



going to cite every conceivable amendment to me, that's naturally going to have some bearing in the seriousness with which I regard the opposition.

MR. AVERY: That's right. The series of amendments that are usually cited in order to make a privacy argument, at least in my opinion, may well include the national citizenship clause of the Fourteenth Amendment, as well as the due process clause.

THE COURT: All right.

MR. AVERY: The second argument is that the question would invade, insofar as they purport to ask questions about any and all meetings and conversations and other communications with people protected by the First Amendment, areas of activities with regard to the speech and associations of these witnesses and potential areas of activity that answers to those questions might go into.

The third argument, which is the argument we made at the time that we were here on the question of abuse -- relates to the abuse of the grand jury function, and that is it would be our assertion that there is no competent evidence suggesting that there had been any violation of crime in the State of Connecticut, and that the whole purpose of this grand jury inquiry is to further the FBI's investigation as to the whereabouts of fugitives, either that, or to gather evidence against those fugitives in connection with pending indictments in

Massachusetts, and I think that although the comments of the government in the grand jury room purport to encompass an investigation broader than that, certainly the grand jury foreperson's own understanding of what they were doing was limited to the fact they were looking into this bank robbery in Boston and the whereabouts of those fugitives. As a result of the fact that that is, in our opinion, the true purpose of the grand jury investigation, I think that we can predict with some certainty that there will be disclosure of what the testimony before the grand jury is to unauthorized persons, namely: FBI agents, and that that disclosure will be made to find these fugitives, and that relates back again to what their original purpose was, and our argument is simply that is an abuse of the historical function of the grand jury, and it's abuse of the process for the government to subpoena and seek immunity and attempt to compel the testimony of the witnesses for that reason.

THE COURT: If there are people in Connecticut who have harbored fugitives, or assisted them in perpetrating a crime, is it your claim that's to go undetected, because the inquiry might also disclose the whereabouts of present fugitives?

MR. AVERY: I wouldn't claim that would have to go undetected. I don't think that would be a reasonable claim. I do claim that's not the purpose of this particular grand jury.

And the last argument is that the witnesses, and



possibly their attorneys, have been subjected to illegal electronic surveillance, and this has led to the subpoena of these witnesses and to some of the particular questions that were put to the witnesses.

Now, on this claim, there are moving papers and affidavits in support of the moving papers, which we have not had an opportunity to prepare at this time. I have communicated to the government that we expect to raise this issue at the hearing on Tuesday, if there is a hearing on Tuesday, to hold these witnesses in contempt, and that we would provide to the government our moving papers and affidavits in advance of any such hearing, but we don't have them to submit to the Court at this time, because we have not had a chance to prepare them.

Those are the claims of the witnesses with regard to their refusal to answer the questions.

MR. DOW: Your Honor, very briefly, I want to respond to the last point. I am prepared to submit an affidavit to the Court indicating that there has been no electronic surveillance or any interception of any oral or other communication, wire or oral communication, and none of the inquiry of the questions of this grand jury were based on any such interception, because none existed.

THE COURT: All right. Well, apparently the witnesses through their counsel intend to submit further elaboration of their arguments contemplating, even if ordered to testify, the

1 witnesses will continue to refuse and present their claims  
2 again on an application to hold them in contempt. Nevertheless,  
3 I have to make some determination at the moment on the govern-  
4 ment's motion, and I am prepared to do that. If elaboration  
5 in the days to come demonstrates that there is more to these  
6 claims than I presently understand, I will be glad to consider  
7 the matter further, but as of the moment, I see no substance  
8 whatever to them to assert the grounds for refusing to answer  
9 the questions put by the grand jury after use immunity has been  
10 accorded these witnesses.

11 The reasonableness of a grand jury inquiry as to the  
12 activities of people in Connecticut who may have been in  
13 contact with those who are alleged to have participated in a  
14 bank robbery, apparently -- is it a federally insured bank?

15 MR. DOW: I'm not certain. I think it was a state  
16 insured bank.

17 THE COURT: -- that gives rise to innumerable federal  
18 violations of flight to avoid prosecution, harboring --

19 MR. DOW: It's a federally insured bank.

20 THE COURT: Well, then more statutes come into play.

21 In any event, there are clearly topics before this  
22 grand jury entitling it to explore the possibility that crimes  
23 have occurred in Connecticut, which is the District in which the  
24 grand jury sits, and they are not ousted from their legitimate  
25 function of making that inquiry because of the possibility that



the answers to the questions will also disclose the whereabouts of those who apparently are being sought in connection with crimes in Massachusetts.

Essentially, when all is said and done, it seems to me as if the witnesses are really asserting what they conceive to be a constitutionally protected right of privacy. It's understandable they may have a personal preference not to assist a grand jury uncovering evidence of the commission of federal crimes, but their preference must give way to the legitimate power of the grand jury to have their testimony.

Recently the President of the United States thought he had certain privacy interests, which as they came to the courts, were phrased with a more colorable claim than the rights of these individuals, and the Supreme Court made it very clear that the scope of the grand jury's investigating power was in connection with claims of privacy.

There is no showing before me whatsoever of an harassing or unnecessarily personalized inquiry. The situation might be different if in a very extraordinary case intimate personal details were being probed for no apparent legitimate purpose. That's not this case at all.

So I find the grounds for refusing to answer totally without merit, and I will grant the government's motion.

I think the way it should be carried into effect, so there is no ambiguity, is for the government to submit an order

1 containing the text of the questions that were put, and I will  
2 sign that order which will direct the witnesses to respond to  
3 those questions.

4 Let me make it clear to the two witnesses that order  
5 will be signed.

6 When will the grand jury --

7 MR. DOW: The grand jury is still in session today.

8 THE COURT: I suppose it will be possible to sign  
9 that order and have the witnesses reappear before the grand  
10 jury this afternoon?

11 MR. DOW: Yes, sir, that's what we anticipate, that's  
12 what's going to happen.

13 THE COURT: At that time, having been given use  
14 immunity, you will be under a specific order of the Court to  
15 answer specific questions. If you decline to do that, the next  
16 step will inevitably be an application by the government for  
17 contempt penalties, and so there is no ambiguity in your minds  
18 as to what that entails, in the event there is further refusal  
19 after a specific order of the Court directly applies, the risk  
20 you face initially, at least, is civil contempt, which would mean  
21 incarceration until compliance with the order of the Court. It  
22 may be that that incarceration, if it occurs, would terminate  
23 at the expiration of the term of the grand jury, although that's  
24 not necessarily the end of the government's right to seek  
25 enforcement of the order.



1 It may be you would be subject to criminal contempt  
2 penalties in the event that civil contempt penalties were shown  
3 to be ineffective, so I don't want there to be any doubt in your  
4 minds as to the risk you're facing.

5 One further thought: I think when I told you yesterday  
6 that the granting of use immunity obligated you to respond,  
7 notwithstanding any claim of self-incrimination privilege that  
8 you would otherwise have, and I think I told you that use immunity  
9 provision exempts you from criminal penalties, or at least from  
10 the use of your testimony, doesn't exempt you from prosecution,  
11 but it does exempt the use of your testimony or any evidence  
12 gained by your testimony in connection with criminal charges.

13 I want to be very clear to you -- from what I have  
14 heard of the transcript from the grand jury, the U. S. Attorney  
15 made this clear -- but I want to again make it clear to you  
16 that there is no doubt that the use of your testimony is still  
17 very much available in a perjury prosecution or in a contempt  
18 prosecution. In other words, the immunity you have is that that  
19 testimony can't be used if the government were to prosecute you  
20 for a substantive offense, but in the event you testify and  
21 there is evidence that the testimony is perjurious, I wouldn't  
22 want you to think that the government can't prosecute you for  
23 perjury and use your testimony because you got use immunity,  
24 because the fact is that use immunity does not insulate your  
25 words from use in a perjury prosecution, nor does it insulate

1 your words from use in a contempt proceeding.

2 Is that clear to both of you?

3 (Both witnesses answered in the affirmative.)

4 THE COURT: Do you have any questions about that what-  
5 soever?

6 (Both witnesses answered in the affirmative.)

7 THE COURT: Do you both understand you are now being  
8 ordered by the Court to answer the specific questions that  
9 were put to you yesterday, you both understand that?

10 MS. TURGEON: Yes.

11 THE COURT: On the presentation of that order, I will  
12 sign it.

13 (Court adjourned at 12:55 p.m.)



TRANSCRIPT  
WITNESS-APPELLANTS'  
OFFER OF PROOF

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

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In re:

: Misc. No. RM-53

MARIE THERESA TURGEON  
and ELLEN GRUSSE

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New Haven, Connecticut  
February 18, 1975

B e f o r e: Hon. JON O. NEWMAN, U.S.D.J.

A p p e a r a n c e s:

For the Government:

PETER C. DORSEY, U. S. Attorney, and  
WILLIAM DOW, Ass't U. S. Attorney  
New Haven, Connecticut

For Ms. Turgeon and Ms. Grusse:

MICHAEL AVERY, Esq.  
265 Church Street  
New Haven, Connecticut

DAVID ROSEN  
265 Church Street  
New Haven, Connecticut



1 MR. AVERY: I have under subpoena Mr. Thomas A. Dugan  
2 from the Federal Bureau of Investigation, and we call him at this  
3 time if he is in the courtroom.

4 MR. DOW: Your Honor, the government intends to move,  
5 if we get to that point, to quash the subpoena. Mr. Dugan is  
6 not physically in the courtroom, but is available, if necessary.

7 THE COURT: What's the purpose of his testimony?

8 MR. AVERY: The purpose of Mr. Dugan's testimony is  
9 twofold: One is with respect to the requests that were made  
10 by the FBI to the office of the U. S. Attorney to subpoena these  
11 two witnesses before this grand jury, and the purpose for which  
12 such requests were made; and the second relates to the information  
13 which may be in Mr. Dugan's and the FBI's possession regarding  
14 the alleged fugitives, a great deal of which has already been  
15 made public by Mr. Dugan to raise the question of whether or not  
16 there is any legitimate purpose with regard to the commission  
17 of criminal activity in this District for subpoenaing these  
18 particular witnesses.

19 I might say that Mr. Dugan's testimony should be  
20 considered along with Mr. Dow's testimony on this subject, and  
21 I will also propose to call Mr. Dow to the stand to testify  
22 again about the requests that were made by the FBI to him in  
23 connection with these witnesses on the question of whether or not  
24 he proposes to release information to the FBI in the event that  
25 these witnesses would testify, and in connection with certain

1 representations that Mr. Dow had made to me at the beginning of  
2 this case that the witnesses would not have been subpoenaed  
3 before the grand jury but for the fact that they had not talked  
4 to the FBI, and if they had talked to the FBI, at that point  
5 would be excused from testifying before the grand jury, so the  
6 testimony of Mr. Dugan and Mr. Dow, taken together, it's our  
7 position and we make an offer of proof of that at this time,  
8 it would constitute evidence on the question of whether or not  
9 the inquiry is directed toward evidence of criminal activity,  
10 or rather whether it is not directed toward helping the FBI  
11 complete its investigation and find these two fugitives.

12 THE COURT: Your reasons for wanting to call him are  
13 on the record and will serve in the event this matter is reviewed.

14 The purposes for which you want to call him are  
15 insufficient to justify testimony. The fact that a witness  
16 doesn't say something to an FBI agent, and is then called to the  
17 grand jury is certainly no reason to bar the grand jury from  
18 wanting the answer. If the person testifies to the agent, then  
19 the agent can come and tell the grand jury the answer so that  
20 the grand jury can determine whether there is a basis to indict,  
21 and if the witness prefers to avoid the FBI agent, which a person  
22 may do, a person is then subject to the process of the grand jury,  
23 so that fact doesn't need any evidence and wouldn't alter the  
24 outcome.

25 I am satisfied that the representations concerning the



1 inquiry of the grand jury as to possible violations of federal  
2 law in the District of Connecticut are sufficient to justify the  
3 grand jury asking the particular questions that were put to  
4 these witnesses.

5 MR. DOW: Thank you, your Honor.

6 MR. AVERY: Do I understand your Honor to be ruling  
7 at this time that I may not call Mr. Dow to the stand to testify  
8 as to these matters, as well?

9 THE COURT: Not for the purposes that you have indicated  
10 you want to ask him. I don't think any further testimony is  
11 needed along the lines that you have indicated you wanted to  
12 ask him.

13 MR. AVERY: I would like just to cite for the record  
14 for the Court that in such proceeding as we are engaged in this  
15 morning, a person accused of contempt has the right to call  
16 witnesses in her behalf, and this is --

17 THE COURT: I assume the rules of evidence still  
18 apply, that the evidence has to be relevant to something.

19 MR. AVERY: It does have to be relevant to something,  
20 and in response to what your Honor has stated, our argument is  
21 this: that if under some circumstances failure of a person to  
22 talk to the FBI might be consistent with a legitimate purpose for  
23 calling them before the grand jury if the only purpose for which  
24 they are being called before the grand jury is in order to  
25 further an FBI's investigation as to the whereabouts of fugitives,

then that's something that the Court should take a full inquiry into. I would just --

THE COURT: There may be questions that are put to a witness which are of such marginal relevance to any possible federal violation that a further inquiry needs to be made, but these questions on their face are so pertinent to possible federal violation that we don't need to take the time to take testimony to see what other purposes may also be served. There is obviously a relationship between the responses to these questions and possible federal law violation.

MR. AVERY: I would say this in addition, your Honor, and that is the questions, of course, have been phrased by the U. S. Attorney, and it would be my submission that the questions have been phrased that -- just so that it would appear that the inquiry is, in fact, directed toward uncovering crime in Connecticut when, indeed, that is not the nature of the inquiry, and that it really only takes a certain cleverness in phrasing the questions in order to achieve that result.

Of course, I suppose anytime that the FBI is using a grand jury to pursue fugitives it might be said, and a cover story might be developed, that the purpose of inquiry is to investigate the harboring of fugitives statutes or -- but just because it's so easy to come up with that explanation and, therefore, to cover over what is, in effect, an abuse of grand jury system, I would submit that in such cases the government



ought to be required to make a showing that they have something to go on at a minimum.

THE COURT: They have made their representations and the questions themselves are sufficient showing in the context of this proceeding.

MR. AVERY: I would also submit to the Court at this time affidavits which we have from the witnesses and relatives of the witnesses, in the first instance, with regard to FBI approaches made to relatives of the witness which --

MR. DOW: May the government have copies?

MR. AVERY: I'm sorry -- this is in connection with our claim, your Honor, that the FBI has been involved in a campaign of harassment of the families of these witnesses, and that this campaign itself relates to the abuse which is being made of the grand jury process here.

Your Honor may recall that last week I had made an oral motion asking that the FBI be restrained from engaging in these practices by this Court, and your Honor indicated that an insufficient showing was made at that time.

In addition, I would submit an affidavit from Robert Zedler, who is an attorney in the State of Kentucky, who represents the witnesses who were subpoenaed to testify before the grand jury in Lexington, Kentucky, and this affidavit is with regard to both of the questions which I'm currently discussing.

On the one hand, it shows that the same practice and

1 procedure was followed in Lexington, Kentucky, namely: people  
2 were subpoenaed after refusing to talk with FBI agents, and it  
3 also raises issues of harassment of those witnesses and their  
4 families in the Lexington, Kentucky grand jury investigation,  
5 and we submit that, because it's our position that what's happen-  
6 ing in Lexington, Kentucky, and what's happening here, are part  
7 of the same pattern of FBI grand jury abuse and harassment of  
8 these witnesses.

9 At this time, I would also submit and have marked an  
10 article from last night's newspaper in the New Haven Register,  
11 which is an interview with Mr. Thomas Dugan, Special Agent from  
12 the FBI, which would have formed part of the factual basis for  
13 my questioning Mr. Dugan, and I submit it in support of our claim  
14 that we should be allowed to question Mr. Dugan in connection  
15 with his and the FBI's intentions regarding the subpoena of  
16 these witnesses before the grand jury.

17 It would also be my claim, your Honor, and I make this  
18 for the record, I understand your Honor has ruled on this, but  
19 I want the record to be complete, if Mr. Dugan were to testify,  
20 he would be able to testify about facts in his possession which  
21 he communicated to the newspaper reporter beyond what was  
22 reported in the article which would have related to the improper  
23 purpose of the FBI in causing these witnesses to be subpoenaed  
24 before the grand jury.  
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WITNESS-APPELLANTS'  
EXHIBIT A  
LETTER ON GUIDELINES

Hon. Emanuel Celler,  
Chairman, Committee on the Judiciary  
House of Representatives, Washington, D.C.

Dear Mr. Chairman:

When Associate Deputy Attorney General Wood testified on November 10 before Subcommittee No. 5 of your Committee on H.R. 2589, H.R. 8829, and 10689, a number of questions concerning juries were raised to which you requested the Department of Justice supply answers for the record.

A number of questions were raised in connection with Mr. Wood's testimony recommending that H.R. 10689, which would make it a crime for an employer to fire an employee for his Federal jury service, be amended to provide instead, for a civil penalty. As Mr. Wood indicated in his testimony, the Department of Justice contemplated that a civil action would be instituted by the Department of Justice and that the penalty would be paid to the United States rather than to the juror. In order to accomplish this, language patterned after section 9 of the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. 1678, could be used. Some concern was expressed at the hearings that a civil penalty statute should specifically provide who the parties to the action would be and to whom the penalty would be paid. If the language were patterned after the section cited, this would not be necessary. There would, of course, be no harm in specifying the parties and the recipient of the fine in the statute.

Mr. Wood was also asked whether it would be desirable to have an action brought for the employee's benefit rather than for a penalty accruing the United States. He indicated that the Department's concern was only that the penalty not be criminal, and that it might be possible to provide for a civil penalty which would benefit the employee himself. The Department of Justice defers to the judgment of your Committee as to the most appropriate civil remedy for the problem of jurors fired for Federal jury service.

Mr. Wood was also asked whether there had been any challenges to the exclusion of 18 to 21-year olds from jury service. In United States v. Tantash, 409 F.2d 227 (9th Cir. 1969), cert. denied, 395 U.S. 968, a defendant convicted of failure to report for induction argued unsuccessfully that exclusion of minors from his jury panel violated his constitutional rights. More recently, in United States v. McVean, 436 F.2d 1120 (5th Cir. 1971), decided January 14, 1971 (although the offense occurred prior to



passage of the legislation relating to 18-year old voters), the Court held in a case involving conviction of a person under 21 for unlawful possession and sale of a hallucinogenic drug that the defendant was not deprived of any rights under the Fifth and Sixth Amendments to the Constitution by the congressional limitation of eligibility for jury service to those 21 year old or older. The Supreme Court has recently denied certiorari. See also United States v. Butera, 420 F.2d 564 (1st Cir. 1970).

You and Congressman Mikva asked a number of questions concerning grand jury investigations. There are no written guidelines for the conducting of these investigations, except in the area of granting of immunity. Those guidelines provide that:

"All requests for approval of immunity applications must be submitted in writing, allowing a[t] least two weeks whenever possible for consideration and processing, and should include the following information:

"1. Name of the prospective witness for whom immunity is requested.

"2. Date and place of birth, if known.

"3. FBI and local police number, if any.

"4. Residence address.

"5. Name of employer or company with which he is associated.

"6. Relative importance of the witness in the criminal activity in the area.

"7. Whether a check of pertinent state and Federal offices in the area reveals the existence of any charges pending against the witness, and, if so, the nature of the charges.

"8. Whether the witness is currently incarcerated, and, if so, under what conditions and for what length of time.

"9. Docket number of the case in which the witness' testimony or information is sought, or matter number involved in the grand jury proceeding.

"10. Brief resume of the background of the case or proceeding.

"11. Reasons for the request, including:

"(a) the witness's part in the matter under investigation.

"(b) the testimony or information he is expected to be able to give.

"(c) why he may be expected to invoke the privilege against self-discrimination.

"(d) how the testimony or information sought may be necessary to the public interest.

"12. Estimation of whether the witness is likely to testify or produce information if immunity is granted.

"13. Estimation of what Federal and state offenses on the part of the witness may be disclosed if the witness testifies or produces information under the grant of immunity."

When a request for an authorization to apply for an immunity grant is sought, it is sent to the appropriate Section of the Criminal Division, to which the following guideline applies:

"In evaluating the request from the United States Attorney, you should view the information supplied by him as the starting point, and not the end, of analysis. Your memorandum to me should include not only factual recitals and your conclusions but a careful analysis of the benefits and costs of a grant of immunity in the particular case; How strong would the Government's case be without the testimony of the prospective witness? How strong with it? How likely is it that the witness will refuse to testify even if ordered to do so by the court? Would there be an effective sanction against this contemptuous conduct if it occurred? Would we be willing to employ such a sanction, or might special circumstances, such as a close family relationship between the witness and the defendant, make it inequitable to do so? Might the witness's compelled testimony lead to unfortunate collateral consequences, such as physical reprisals by the defendant? How likely is it that the witness will commit perjury? Could we bring an effective prosecution against him if he did? Can the examination of the witness be effectively confined, or might we be conferring immunity for a broad range of past criminal conduct? None of these questions are necessarily decisive, but any of them may become relevant. Even when the United States Attorney's request seems complete on its face, it may be desirable to discuss the case with him by telephone to be sure that all issues of law, tactics, and policy have been considered."

The material developed pursuant to these guidelines is then reviewed by the Assistant Attorney General for the Criminal Division.

With respect to your question concerning who decides whether to conduct a grand jury investigation, the answer depends upon the law involved in the investigation. Grand jury investigations concerning antitrust, tax and internal security matters must be approved by the respective Assistant Attorney General, and antitrust matters also require the approval of the Attorney General. Prior approval must be obtained from the Civil Rights Division before presenting cases under the civil rights, peonage, slavery,



or involuntary servitude statutes to a grand jury for investigation or indictment. As far as the Criminal Division is concerned, no prosecution may be instituted under the following statutes without specific authorization of the Criminal Division:

Antiracketeering cases not involving the use or threat of force or violence, 18 U.S.C. 1951.

Antiriot cases, 18 U.S.C. 245(b)(3).

Civil Rights Act of 1960; violations of Act arising out of labor disputes or statutes assigned to Criminal Division.

Contempt of Congress, 2 U.S.C. 194.

Copyright Law, 17 U.S.C. 104 and 105.

Desecration of the flag, 18 U.S.C. 700.

False statements of Federal investigators, 18 U.S.C. 1001.

Federal election laws.

Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 401-531.

Loansharking statutes, 18 U.S.C. 891 et seq.

Purchase and sale of public office, 18 U.S.C. 214, 215.

Railway Labor Act, 45 U.S.C. 152 and 181.

Security Act, Securities Exchange Act and Investment Advisers Act of 1940, as amended (15 U.S.C. 77a et seq.; 15 U.S.C. 78a et seq.; 15 U.S.C. 80b-1 et seq.), except where violations are brought to the attention of U.S. Attorneys by the Securities and Exchange Commission.

Selective Service matters, in the following types of cases only:

1. Second delinquency cases involving subjects who have been previously prosecuted under the Act and have served sentences;

2. Counseling, aiding and abetting evasion or refusal;

3. Mutilation of Selective Service certificates.

Strikebreakers statute, 18 U.S.C. 1231.

Unlawful possession or receipt of firearms, cases arising under section 1202(a) of Title VII of Public Law 90-351, the Omnibus Crime Control and Safe Streets Act of 1968, as amended.

White Slave Traffic Act (18 U.S.C. 2421, et seq.); non-commercial cases.

Wiretapping and electronic surveillance; cases arising under Title III of P.L. 90-351, the Omnibus Crime Control and Safe Streets Act of 1968.

The United States Attorney may initiate grand jury investigations on his own in areas not covered above. Also, of course, the Attorney General becomes involved

in the decision whether to institute grand jury proceedings in particularly important or significant cases.

I am returning, corrected, the transcript of Mr. Wood's testimony. Thank you for having afforded us an opportunity to make corrections.

Sincerely,

Richard G. Kleindienst  
Deputy Attorney General.



WITNESS-APPELLANTS'  
EXHIBIT B  
NEW HAVEN REGISTER ARTICLE





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from coming information on both  
Mrs. Power and Mr. Saxe.  
two According to FBI officials,  
the two later shared an apart-  
ment with several other "work-  
ing girls" in the Farrington  
Avenue area of Hartford before  
departing for Kentucky.  
Authorities say the two have  
"totally cut themselves off"  
from members of their fami-  
lies. Mrs. Saxe's family now  
lives in upstate New York and  
the Powers family is in Colora-  
do.  
"They are private people.  
They're just broken up. They've  
tried to be helpful," one FBI  
official said of the families.  
Meanwhile, the Hall for the  
two may have gone west.  
"They travel extensively. We  
know they've been back and  
forth to the West Coast," Dugan  
said.  
He said the two may have  
headed for Cincinnati, Ohio.